

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/6/2018 7:42:07 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: kent.mayo@bakerbotts.com
Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS
in     

Confidentiality Notice:

ED_002911D_00038191-00001

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 10/19/2018 7:51:07 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com
Subject: Meeting with Cross-Cutting Issues Group on Coal Ash

Barnes,

Thank you again for giving me a call back yesterday. As discussed, we talked internally and wanted to propose **November 19 (afternoon) or November 20 (any time)** for a meeting between EPA and some of our Cross-Cutting Issues Group members to discuss coal ash issues. If those dates are inconvenient, just let us know and we'll circle back with more. Our members really appreciate the opportunity to talk to you and your team, an OGC representative, and (if possible) Steven Cook.

Please do not hesitate to let us know if you have any questions about our Group or potential discussion topics, and just let us know what date/time would be most convenient for you. In the meantime, if you happen to know who good contact for me to follow up with at DOJ about *Waterkeeper Alliance, Inc. v. Wheeler*, No 1:18-2230 (D.D.C.), that would also be much appreciated.

Thanks, and have a great weekend!

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s]

listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: Johnson, Barnes [Johnson.Barnes@epa.gov]
Sent: 9/7/2018 7:10:16 PM
To: martha.thomsen@bakerbotts.com
CC: kent.mayo@bakerbotts.com; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPALand](#)

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Thursday, September 06, 2018 3:42 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com
Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/24/2018 2:10:21 PM
To: Devlin, Betsy [Devlin.Betsy@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]
CC: Johnson, Barnes [Johnson.Barnes@epa.gov]; kent.mayo@bakerbotts.com; Elliott, Ross [Elliott.Ross@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All,

We just wanted to say a quick thank you to you and your colleagues for talking to us and our Cross-Cutting Issues Group members last week. We found the discussion on state coal ash permitting programs very helpful and informative, and we really appreciate you all taking the time to speak with us.

Thank you again, and have a great week!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Wednesday, September 19, 2018 12:20 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Huggins, Richard <Huggins.Richard@epa.gov>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Calling in now--

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Wednesday, September 19, 2018 12:16 PM
To: Huggins, Richard <Huggins.Richard@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Richard and Betsy,

My sincere apologies – we're having issues conferencing folks in on our end. Would you be able to dial in using the following call in information? Thank you!

1-888-822-7517
1501867

Martha

From: Huggins, Richard <Huggins.Richard@epa.gov>
Sent: Tuesday, September 18, 2018 4:24 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Martha,
We can be reached at 703-308-7521. If for some reason there is a technical difficulty I can be reached at 571-345-6855.

Talk to you tomorrow,
Richard

Richard Huggins Jr.
Acting Chief
Energy Recovery and Waste Disposal Branch
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
Desk: 703-308-0017 iPhone: 571-345-6855

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Tuesday, September 18, 2018 9:15 AM
To: Devlin, Betsy <Devlin.Betsy@epa.gov>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: Re: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Betsy,

We're looking forward to speaking with you all tomorrow. I just wanted to check back in to see what number we should call to dial you in to the meeting at 12:15 ET? Thanks!

Best,
Martha

On Sep 13, 2018, at 2:16 PM, Devlin, Betsy <Devlin.Betsy@epa.gov> wrote:

Ok. I will get back to you on Monday with the number—I'm going to reserve a conference room and I need to do that and get you the number.

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Thursday, September 13, 2018 2:06 PM
To: Devlin, Betsy <Devlin.Betsy@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Betsy – that's great news! Thanks so much – we're looking forward to it.

If it works for you, if you let us know what number to reach you at we will call you right at 12:15 ET and conference you in.

Please do not hesitate to let us know if you have any further questions.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Thursday, September 13, 2018 1:49 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Martha

Apologies for not responding sooner. I will be available, as will key members of my team on September 19th from 12:15 – 1 pm EDT.

Is there a call in number or a way to access the conference?

Thank you for your assistance.

Betsy Devlin
(703) 308-7906

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Thursday, September 13, 2018 12:07 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Barnes and Betsy – I just wanted to follow up and see if we could confirm Betsy (and/or one of your other colleagues) to speak by phone on September 19th to our members? Please do not hesitate to let me know if you have any questions, and thank you again for considering this.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Thomsen, Martha S.
Sent: Monday, September 10, 2018 9:17 AM
To: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

Thank you again!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Johnson, Barnes <Johnson.Barnes@epa.gov>

Sent: Friday, September 7, 2018 3:10 PM

To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your

teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPALand](#)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]

Sent: Thursday, September 06, 2018 3:42 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: kent.mayo@bakerbotts.com

Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/19/2018 4:15:48 PM
To: Huggins, Richard [Huggins.Richard@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]
CC: Johnson, Barnes [Johnson.Barnes@epa.gov]; kent.mayo@bakerbotts.com; Elliott, Ross [Elliott.Ross@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Richard and Betsy,

My sincere apologies – we're having issues conferencing folks in on our end. Would you be able to dial in using the following call in information? Thank you!

Ex. 6 PP / Ex. 7(C)

Martha

From: Huggins, Richard <Huggins.Richard@epa.gov>
Sent: Tuesday, September 18, 2018 4:24 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Martha,

We can be reached at 703-308-7521. If for some reason there is a technical difficulty I can be reached at 571-345-6855.

Talk to you tomorrow,
Richard

Richard Huggins Jr.
Acting Chief
Energy Recovery and Waste Disposal Branch
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
Desk: 703-308-0017 iPhone: 571-345-6855

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Tuesday, September 18, 2018 9:15 AM
To: Devlin, Betsy <Devlin.Betsy@epa.gov>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: Re: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Betsy,

We're looking forward to speaking with you all tomorrow. I just wanted to check back in to see what number we should call to dial you in to the meeting at 12:15 ET? Thanks!

Best,
Martha

On Sep 13, 2018, at 2:16 PM, Devlin, Betsy <Devlin.Betsy@epa.gov> wrote:

Ok. I will get back to you on Monday with the number—I'm going to reserve a conference room and I need to do that and get you the number.

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Thursday, September 13, 2018 2:06 PM
To: Devlin, Betsy <Devlin.Betsy@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Betsy – that's great news! Thanks so much – we're looking forward to it.

If it works for you, if you let us know what number to reach you at we will call you right at 12:15 ET and conference you in.

Please do not hesitate to let us know if you have any further questions.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Thursday, September 13, 2018 1:49 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard

<Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Martha

Apologies for not responding sooner. I will be available, as will key members of my team on September 19th from 12:15 – 1 pm EDT.

Is there a call in number or a way to access the conference?

Thank you for your assistance.

Betsy Devlin
(703) 308-7906

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]

Sent: Thursday, September 13, 2018 12:07 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: kent.mayo@bakerbotts.com; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Barnes and Betsy – I just wanted to follow up and see if we could confirm Betsy (and/or one of your other colleagues) to speak by phone on September 19th to our members? Please do not hesitate to let me know if you have any questions, and thank you again for considering this.

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts LLP.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Thomsen, Martha S.

Sent: Monday, September 10, 2018 9:17 AM

To: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross

<Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

Thank you again!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Johnson, Barnes <Johnson.Barnes@epa.gov>

Sent: Friday, September 7, 2018 3:10 PM

To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross

<Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](#)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Thursday, September 06, 2018 3:42 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com
Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/18/2018 1:15:05 PM
To: Devlin, Betsy [Devlin.Betsy@epa.gov]
CC: Johnson, Barnes [Johnson.Barnes@epa.gov]; kent.mayo@bakerbotts.com; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: Re: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Betsy,

We're looking forward to speaking with you all tomorrow. I just wanted to check back in to see what number we should call to dial you in to the meeting at 12:15 ET? Thanks!

Best,
Martha

On Sep 13, 2018, at 2:16 PM, Devlin, Betsy <Devlin.Betsy@epa.gov> wrote:

Ok. I will get back to you on Monday with the number—I'm going to reserve a conference room and I need to do that and get you the number.

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Thursday, September 13, 2018 2:06 PM
To: Devlin, Betsy <Devlin.Betsy@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Betsy – that's great news! Thanks so much – we're looking forward to it.

If it works for you, if you let us know what number to reach you at we will call you right at 12:15 ET and conference you in.

Please do not hesitate to let us know if you have any further questions.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW

Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Thursday, September 13, 2018 1:49 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Martha

Apologies for not responding sooner. I will be available, as will key members of my team on September 19th from 12:15 – 1 pm EDT.

Is there a call in number or a way to access the conference?

Thank you for your assistance.

Betsy Devlin
(703) 308-7906

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Thursday, September 13, 2018 12:07 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Barnes and Betsy – I just wanted to follow up and see if we could confirm Betsy (and/or one of your other colleagues) to speak by phone on September 19th to our members? Please do not hesitate to let me know if you have any questions, and thank you again for considering this.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Thomsen, Martha S.

Sent: Monday, September 10, 2018 9:17 AM

To: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

Thank you again!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Johnson, Barnes <Johnson.Barnes@epa.gov>
Sent: Friday, September 7, 2018 3:10 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPALand](#)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Thursday, September 06, 2018 3:42 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com
Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/13/2018 6:17:59 PM
To: Devlin, Betsy [Devlin.Betsy@epa.gov]; Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: kent.mayo@bakerbotts.com; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Perfect – thank you!

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Thursday, September 13, 2018 2:16 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Ok. I will get back to you on Monday with the number—I'm going to reserve a conference room and I need to do that and get you the number.

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Thursday, September 13, 2018 2:06 PM
To: Devlin, Betsy <Devlin.Betsy@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Betsy – that's great news! Thanks so much – we're looking forward to it.

If it works for you, if you let us know what number to reach you at we will call you right at 12:15 ET and conference you in.

Please do not hesitate to let us know if you have any further questions.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Thursday, September 13, 2018 1:49 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Martha

Apologies for not responding sooner. I will be available, as will key members of my team on September 19th from 12:15 – 1 pm EDT.

Is there a call in number or a way to access the conference?

Thank you for your assistance.

Betsy Devlin
(703) 308-7906

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Thursday, September 13, 2018 12:07 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins,

Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Barnes and Betsy – I just wanted to follow up and see if we could confirm Betsy (and/or one of your other colleagues) to speak by phone on September 19th to our members? Please do not hesitate to let me know if you have any questions, and thank you again for considering this.

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Thomsen, Martha S.

Sent: Monday, September 10, 2018 9:17 AM

To: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

ED_002911D_00038209-00003

Thank you again!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Johnson, Barnes <Johnson.Barnes@epa.gov>

Sent: Friday, September 7, 2018 3:10 PM

To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPALand](https://twitter.com/EPALand)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]

Sent: Thursday, September 06, 2018 3:42 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: kent.mayo@bakerbotts.com

Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/13/2018 6:06:03 PM
To: Devlin, Betsy [Devlin.Betsy@epa.gov]; Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: kent.mayo@bakerbotts.com; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Betsy – that's great news! Thanks so much – we're looking forward to it.

If it works for you, if you let us know what number to reach you at we will call you right at 12:15 ET and conference you in.

Please do not hesitate to let us know if you have any further questions.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Devlin, Betsy <Devlin.Betsy@epa.gov>
Sent: Thursday, September 13, 2018 1:49 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Martha

Apologies for not responding sooner. I will be available, as will key members of my team on September 19th from 12:15 – 1 pm EDT.

Is there a call in number or a way to access the conference?

Thank you for your assistance.

Betsy Devlin
(703) 308-7906

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Thursday, September 13, 2018 12:07 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Barnes and Betsy – I just wanted to follow up and see if we could confirm Betsy (and/or one of your other colleagues) to speak by phone on September 19th to our members? Please do not hesitate to let me know if you have any questions, and thank you again for considering this.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Thomsen, Martha S.
Sent: Monday, September 10, 2018 9:17 AM
To: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

Thank you again!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS

in     

From: Johnson, Barnes <Johnson.Barnes@epa.gov>

Sent: Friday, September 7, 2018 3:10 PM

To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>

Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>

Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](#)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]

Sent: Thursday, September 06, 2018 3:42 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: kent.mayo@bakerbotts.com

Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW

ED_002911D_00038210-00004

Washington DC 20004-2400
USA

BAKER BOTTS



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/13/2018 4:07:12 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: kent.mayo@bakerbotts.com; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Barnes and Betsy – I just wanted to follow up and see if we could confirm Betsy (and/or one of your other colleagues) to speak by phone on September 19th to our members? Please do not hesitate to let me know if you have any questions, and thank you again for considering this.

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Thomsen, Martha S.
Sent: Monday, September 10, 2018 9:17 AM
To: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned

this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

Thank you again!

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



From: Johnson, Barnes <Johnson.Barnes@epa.gov>
Sent: Friday, September 7, 2018 3:10 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]

Sent: Thursday, September 06, 2018 3:42 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: kent.mayo@bakerbotts.com

Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 9/10/2018 1:17:23 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: kent.mayo@bakerbotts.com; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

All – thank you so much for considering this invitation to speak to our Cross-Cutting Issues Group! Our members would really appreciate hearing Betsy and/or other members of her coal ash team speak on the 19th about the development and implementation of the CCR state permitting plans.

In terms of logistics, right now we have this discussion on state permitting plans scheduled for September 19 at 12:15 to 1 pm ET (11:15 to noon CT), but we have some flexibility if that time does not work for you. A representative from the Oklahoma DEQ (likely Patrick Riley) will also be participating by phone. Kent Mayo (copied here) and I had envisioned this as a Q&A that we would start, but then let our members jump in with questions as well. Would that format work for you?

We're still finalizing the day-of logistics, but likely we would give you a call right at 12:15 ET and connect you into our meeting.

Please do not hesitate to let us know if you have any questions – we are happy to discuss by email or phone.

Thank you again!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



From: Johnson, Barnes <Johnson.Barnes@epa.gov>
Sent: Friday, September 7, 2018 3:10 PM
To: Thomsen, Martha S. <martha.thomsen@bakerbotts.com>
Cc: Mayo, Kent <kent.mayo@bakerbotts.com>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; ORCR IO <ORCR_IO@epa.gov>
Subject: RE: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Dear Martha,

Good speaking with you. As discussed, Betsy Devlin, Director of our Materials Recovery and Waste Management Division and possibly some members of her coal ash team are able to join your teleconference/webex on September 19th. I have copied her and a few others on this email so that you two can work together on the specifics.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](https://twitter.com/EPAland)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]
Sent: Thursday, September 06, 2018 3:42 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: kent.mayo@bakerbotts.com
Subject: Invitation to Speak at Cross-Cutting Issues Group Meeting - September 19

Hi Barnes,

I just wanted to follow up on my voicemail from a few minutes ago. As I mentioned in my message, I'm writing to invite you or one of your colleagues to speak on a panel at the annual fall meeting of our Cross-Cutting Issues Group in New Orleans on September 19. As you may recall, the Group consists of about a dozen electric generating companies across the United States, and focuses on various waste and water issues including the federal coal ash rule and the recent development of permitting programs under the WIIN Act.

The meeting will take place on September 19th in New Orleans. We are currently planning a 45 minute moderated discussion at 11:15 CT/12:15 ET (probably by webex or teleconference) on the development and approval of state permitting programs to address CCR. We have a representative from Oklahoma who will be calling in at that time to provide their perspective, and we were hoping you or one of your colleagues would consider providing EPA's perspective. Our members would really appreciate hearing about best practices for developing these programs – what works, what the process is like for getting EPA approval, expectations for how the programs will work in practice, and/or anything else you would consider discussing.

As noted above, we currently have this scheduled for 12:15 ET but have some flexibility to move the discussion to another time if that would be more convenient. Please do not hesitate to contact me if you need any additional information about the Group or the meeting, and thank you again for considering this invitation.

Best,
Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: Johnson, Barnes [Johnson.Barnes@epa.gov]
Sent: 11/12/2018 3:54:09 PM
To: martha.thomsen@bakerbotts.com
CC: ORCR IO [ORCR_IO@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; Celeste, Laurel [celeste.laurel@epa.gov]
Subject: Re: Meeting Monday November 19

Dear Martha,

Yes the meeting is planned for Potomac Yard South. I've included Regina as a cc.

Also, it would help if you could share any of the general topic areas you and your clients would like to discuss. This will help us make sure we have the right people in attendance.

Sincerely
Barnes

Sent from my iPhone

On Nov 12, 2018, at 9:51 AM, "martha.thomsen@bakerbotts.com" <martha.thomsen@bakerbotts.com> wrote:

Barnes,

We're looking forward to meeting with you next Monday – thank you again for arranging this. I wanted to go ahead and give you the names of the additional attendees we'll be bringing with us, and also check about which building we are going to? It looked like the Potomac Yard South building but I wanted to confirm.

The additional attendees coming with us are:

- (1) David Mitchell, Vistra
- (2) Susan Floyd, Entergy
- (3) Dawn Santoianni, Duke Energy

I can also send this directly to Regina Owens – I just realized I'd only spoken to her by phone and did not have her email.

Thanks,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

<image001.png>

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>
>

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: Johnson, Barnes [Johnson.Barnes@epa.gov]
Sent: 10/22/2018 1:10:28 PM
To: martha.thomsen@bakerbotts.com
CC: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com; ORCR IO [ORCR_IO@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Celeste, Laurel [celeste.laurel@epa.gov]
Subject: RE: Meeting with Cross-Cutting Issues Group on Coal Ash

Martha,

Regina Owens will be in touch shortly on the scheduling details. Regarding your question about the DOJ attorney assigned to the OK program challenge, we learned recently that a DOJ attorney was just assigned: Tsuki Hoshijima. Also Laurel Celeste is our attorney and is certainly available for any legal questions that may come to mind.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPALand](#)

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]
Sent: Friday, October 19, 2018 3:51 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com
Subject: Meeting with Cross-Cutting Issues Group on Coal Ash

Barnes,

Thank you again for giving me a call back yesterday. As discussed, we talked internally and wanted to propose **November 19 (afternoon) or November 20 (any time)** for a meeting between EPA and some of our Cross-Cutting Issues Group members to discuss coal ash issues. If those dates are inconvenient, just let us know and we'll circle back with more. Our members really appreciate the opportunity to talk to you and your team, an OGC representative, and (if possible) Steven Cook.

Please do not hesitate to let us know if you have any questions about our Group or potential discussion topics, and just let us know what date/time would be most convenient for you. In the meantime, if you happen to know who good contact for me to follow up with at DOJ about *Waterkeeper Alliance, Inc. v. Wheeler*, No 1:18-2230 (D.D.C.), that would also be much appreciated.

Thanks, and have a great weekend!

Best,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 10/24/2018 3:54:11 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com; ORCR IO [ORCR_IO@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Celeste, Laurel [celeste.laurel@epa.gov]
Subject: RE: Meeting with Cross-Cutting Issues Group on Coal Ash

Barnes,

Thank you again for setting this up - we are looking forward to meeting with you in November. We will follow up soon with the names of any of our members who will be attending in person. In the meantime, I just wanted to see if you knew if Steven Cook would be able to attend?

Thanks,

Martha

Martha S. Thomsen
Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS
in f g+ t

From: Johnson, Barnes <Johnson.Barnes@epa.gov>
Sent: Monday, October 22, 2018 9:10 AM
To: Thomsen, Martha <martha.thomsen@bakerbotts.com>
Cc: Berge, Megan <megan.berge@bakerbotts.com>; Mayo, Kent <kent.mayo@bakerbotts.com>; ORCR IO <ORCR_IO@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Celeste, Laurel <celeste.laurel@epa.gov>
Subject: RE: Meeting with Cross-Cutting Issues Group on Coal Ash

Martha,

Regina Owens will be in touch shortly on the scheduling details. Regarding your question about the DOJ attorney assigned to the OK program challenge, we learned recently that a DOJ attorney was just assigned: Tsuki Hoshijima. Also Laurel Celeste is our attorney and is certainly available for any legal questions that may come to mind.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](#)

From: martha.thomsen@bakerbotts.com [<mailto:martha.thomsen@bakerbotts.com>]

Sent: Friday, October 19, 2018 3:51 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com

Subject: Meeting with Cross-Cutting Issues Group on Coal Ash

Barnes,

Thank you again for giving me a call back yesterday. As discussed, we talked internally and wanted to propose **November 19 (afternoon) or November 20 (any time)** for a meeting between EPA and some of our Cross-Cutting Issues Group members to discuss coal ash issues. If those dates are inconvenient, just let us know and we'll circle back with more. Our members really appreciate the opportunity to talk to you and your team, an OGC representative, and (if possible) Steven Cook.

Please do not hesitate to let us know if you have any questions about our Group or potential discussion topics, and just let us know what date/time would be most convenient for you. In the meantime, if you happen to know who good contact for me to follow up with at DOJ about *Waterkeeper Alliance, Inc. v. Wheeler*, No 1:18-2230 (D.D.C.), that would also be much appreciated.

Thanks, and have a great weekend!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: martha.thomsen@bakerbotts.com [martha.thomsen@bakerbotts.com]
Sent: 10/22/2018 1:13:44 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com; ORCR IO [ORCR_IO@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Celeste, Laurel [celeste.laurel@epa.gov]
Subject: RE: Meeting with Cross-Cutting Issues Group on Coal Ash

Thanks Barnes! We really appreciate it.

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.
martha.thomsen@bakerbotts.com
T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS



From: Johnson, Barnes <Johnson.Barnes@epa.gov>
Sent: Monday, October 22, 2018 9:10 AM
To: Thomsen, Martha <martha.thomsen@bakerbotts.com>
Cc: Berge, Megan <megan.berge@bakerbotts.com>; Mayo, Kent <kent.mayo@bakerbotts.com>; ORCR IO <ORCR_IO@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Celeste, Laurel <celeste.laurel@epa.gov>
Subject: RE: Meeting with Cross-Cutting Issues Group on Coal Ash

Martha,

Regina Owens will be in touch shortly on the scheduling details. Regarding your question about the DOJ attorney assigned to the OK program challenge, we learned recently that a DOJ attorney was just assigned: Tsuki Hoshijima. Also Laurel Celeste is our attorney and is certainly available for any legal questions that may come to mind.

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPALand](#)

From: martha.thomsen@bakerbotts.com [mailto:martha.thomsen@bakerbotts.com]

Sent: Friday, October 19, 2018 3:51 PM

To: Johnson, Barnes <Johnson.Barnes@epa.gov>

Cc: megan.berge@bakerbotts.com; kent.mayo@bakerbotts.com

Subject: Meeting with Cross-Cutting Issues Group on Coal Ash

Barnes,

Thank you again for giving me a call back yesterday. As discussed, we talked internally and wanted to propose **November 19 (afternoon) or November 20 (any time)** for a meeting between EPA and some of our Cross-Cutting Issues Group members to discuss coal ash issues. If those dates are inconvenient, just let us know and we'll circle back with more. Our members really appreciate the opportunity to talk to you and your team, an OGC representative, and (if possible) Steven Cook.

Please do not hesitate to let us know if you have any questions about our Group or potential discussion topics, and just let us know what date/time would be most convenient for you. In the meantime, if you happen to know who good contact for me to follow up with at DOJ about *Waterkeeper Alliance, Inc. v. Wheeler*, No 1:18-2230 (D.D.C.), that would also be much appreciated.

Thanks, and have a great weekend!

Best,

Martha

Martha S. Thomsen

Associate

Baker Botts L.L.P.

martha.thomsen@bakerbotts.com

T +1.202.639.7863

Ex. 6 PP / Ex. 7(C)

1299 Pennsylvania Ave NW
Washington DC 20004-2400
USA

BAKER BOTTS

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

8/28/18 Meeting with Van Ness Feldman

<u>Name</u>	<u>Affiliation</u>	<u>Email Address</u>
Meghan Ruttke	ORCR	Ruttke.Meghan@epa.gov
Kirsten Hillier	ORCR	Hillier.Kirsten@epa.gov
Richard Hyslop Jr.	ORCR	hyslop.richard@epa.gov
Ross Elliott	ORCR	elliott.ross@epa.gov
Rob Tulley	T: A/City Utilities	rtulley@andassociatesinc.com
Stephen Fets	VNF	sf@vnf.com
BARNES JOHNSON	EPA/ORCR	johnson.barnes@epa.gov
Nathan Wittbrodt	ORCR	Wittbrodt.Nathan@epa.gov
Laurel Celeste	OGC	celeste.laurel@epa.gov
May Jackson	ORCR	Jackson.May@epa.gov

Message

From: Roewer, James [JRoewer@eei.org]
Sent: 11/27/2017 1:19:22 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: Doug Green [dhgreen@venable.com]; Fawal, Margaret K. [MKFawal@Venable.com]; HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com) [HAROLD.REGISTERJR@cmsenergy.com]
Subject: FW: Confirmation of CCR Rule Groundwater Monitoring
Attachments: CCRRuleGWMonitoring11272017.pdf

David,

Attached is a letter seeking confirmation regarding the timing of the groundwater monitoring program as established by EPA's CCR rule (40 CFR Part 257, Subpart D).

USWAG members are committed to complying with all environmental regulations, including the CCR rule. Therefore, clarification of the rule's requirements—including confirmation of USWAG's reading of the requirements specific to groundwater monitoring—is critical.

We appreciate your attention to this matter.

Thank you,

Jim Roewer

Jim Roewer
Executive Director
USWAG



c/o Edison Electric Institute
701 Pennsylvania Avenue, NE
Washington, DC 20004-2696
202-548-5645
www.uswag.org

November 27, 2017

Via Email

David Fatouhi
Deputy General Counsel
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 2310A
Washington, DC 20460
fatouhi.david@epa.gov

Mr. Fatouhi,

I am writing on behalf of the Utility Solid Waste Activities Group (USWAG) regarding implementation of the groundwater monitoring program in the Environmental Protection Agency's coal combustion residuals (CCR) rule (40 CFR Part 257, Subpart D). Specifically, I am seeking confirmation regarding the timing of certain requirements that must be taken under the CCR rule's groundwater monitoring provisions. USWAG members, and the industry in general, are committed to complying with all environmental regulations, including the CCR rule. Therefore, clarification of the rule's requirements—including confirmation of USWAG's reading of the requirements specific to groundwater monitoring—is critical.

The CCR rule's groundwater monitoring program utilizes a phased approach, which provides for a graduated response over time to groundwater contamination as the evidence of such contamination increases. Owners and operators of CCR units were required to initiate the first phase of the groundwater program, detection monitoring (40 C.F.R. § 257.94), by October 17, 2017. Depending on the results of the groundwater sampling and analysis and statistical evaluation in detection monitoring, the next phase of the groundwater program, assessment monitoring, could be triggered as soon as January 15, 2018.¹ Because of the significant implications of assessment monitoring (*e.g.*, corrective action and/or forced closure

¹ Under § 257.93(h)(2), owners/operators have 90 days from sampling and analysis to run the statistical evaluation in detection monitoring. Because § 257.90(b)(1)(iv) requires an owner/operator to begin evaluating the data by October 17, 2017, the rule contemplates that the statistical evaluation will be completed by January 15, 2018.

of unlined surface impoundments), it is critical that EPA provide confirmation on the timing of each groundwater monitoring phase so that owners and operators can appropriately implement the rule's requirements going forward.

USWAG seeks confirmation with regard to its interpretation of the timing for two specific requirements in the CCR rule's groundwater monitoring program: (1) the timing to establish an assessment monitoring program if an owner/operator is unable to successfully make an alternate source demonstration in detection monitoring under § 257.94(e)(2); and (2) the timing for conducting a statistical evaluation on the data collected under the assessment monitoring program. USWAG's interpretation of the timing for each of these specific requirements, and the basis for that interpretation, is provided below. In addition, to help illustrate USWAG's interpretation, I have attached a diagram and two charts, outlining the timeframes in the rule's groundwater monitoring program.

1. Alternate Source Demonstration in Detection Monitoring

Under § 257.94(e)(1), if an owner/operator detects a statistically significant increase (SSI) above background levels for an appendix III constituent during detection monitoring, the owner/operator must within 90 days of detecting the SSI proceed to establish a groundwater assessment monitoring program meeting the requirements of § 257.95. However, § 257.94(e)(2) allows the owner/operator 90 days to demonstrate that the SSI was caused by a source other than the CCR unit or resulted from an error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality (referred to here as an "alternate source demonstration"). If, at the end of that 90-day timeframe, the owner/operator is not able to successfully make this demonstration, the rule requires the owner/operator to "initiate an assessment monitoring program as required under § 257.95."

Under § 257.95(b), an owner/operator must within 90 days of "triggering" an assessment monitoring program, sample and analyze the groundwater for all appendix IV constituents. USWAG interprets the term "triggering" as occurring either: (1) if an owner/operator elects not to make an alternate source demonstration under § 257.94(e)(2), on the date an SSI is detected in a round of sampling taken under § 257.94(b); or (2) if an owner/operator tries but is unable to successfully make an alternate source demonstration under § 257.94(e)(2), at the end of the 90-day period in § 257.94(e)(2). In other words, the 90-day time period for conducting an alternate source demonstration in § 257.94(e)(2) is separate from, and does not run concurrently with, the 90-day time frame in § 257.94(e)(1) or § 257.95(b).²

² USWAG notes that this is in contrast to the 90-day time period for making an alternate source demonstration when an assessment of corrective measures is triggered in the assessment monitoring program (§ 257.95(g)(3)(ii)). EPA makes clear in the preamble to the rule, that—unlike the alternate

We would appreciate your confirmation that our understanding of the timing in § 257.94(e)(2) is correct.

2. Statistical Evaluation of Assessment Monitoring Data

Throughout the groundwater monitoring requirements, EPA distinguishes between the sampling and analysis of groundwater and the statistical evaluation of the data obtained through sampling and analysis. For example, under the detection monitoring program, the rule allows 90 days to complete the statistical evaluation after sampling and analysis is complete. *See* 40 C.F.R. § 257.93(h)(2). EPA explains in the preamble that it agreed with commenters that “90 days would be a reasonable amount of time to complete the statistical analysis to determine whether an exceedance had occurred.” 80 Fed. Reg. at 21403. *See also* 257.94(e)(2) (allowing the owner/operator to demonstrate that an SSI resulting from an error in *sampling, analysis, [or] statistical evaluation . . .*) (emphasis added).

In assessment monitoring, however, the rule does not specify a specific timeframe for completing the statistical evaluation of the data. Instead, under § 257.95(b), the owner/operator must *sample and analyze* the groundwater for all appendix IV constituents within 90 days of triggering an assessment monitoring program; and under § 257.95(d)(1), within 90 days of obtaining the results under § 257.95(b), the owner/operator must *resample and analyze* the groundwater for all appendix III constituents and those appendix IV constituents detected in § 257.95(b). The rule then jumps ahead, requiring the owner/operator to initiate an assessment of corrective measures within 90 days of detecting an appendix IV constituent at a statistically significant level above the groundwater protection standard (§ 257.95(g)(3)). Again, however, the rule does not specify a deadline for conducting the statistical evaluation for determining whether there is an exceedance of the groundwater protection standard.

USWAG believes that, at a minimum, owners/operators have 90 days to conduct the statistical evaluation following completion of the sampling and analysis in § 257.95(d)(1). This timeframe would be consistent with the 90-day time period provided for detection monitoring in § 257.93(h)(2), and with EPA’s explanation and reasoning in the preamble.

We would appreciate your confirmation that this interpretation of the timing for assessment monitoring is correct.

source demonstration timing in detection monitoring—the time period in § 257.95(g)(3)(ii) runs concurrently with the 90-day time period in § 257.96(a) for initiating an assessment of corrective measures. 80 Fed. Reg. 21302, 21406 (Apr. 17, 2015).

David Fatouhi
U.S. Environmental Protection Agency
Page 4 of 4

* * * *

Thank you in advance for your prompt attention to this matter. If you have any questions regarding the issues raised in this letter, please contact me at jim.roewer@uswag.org or (202) 508-5645.

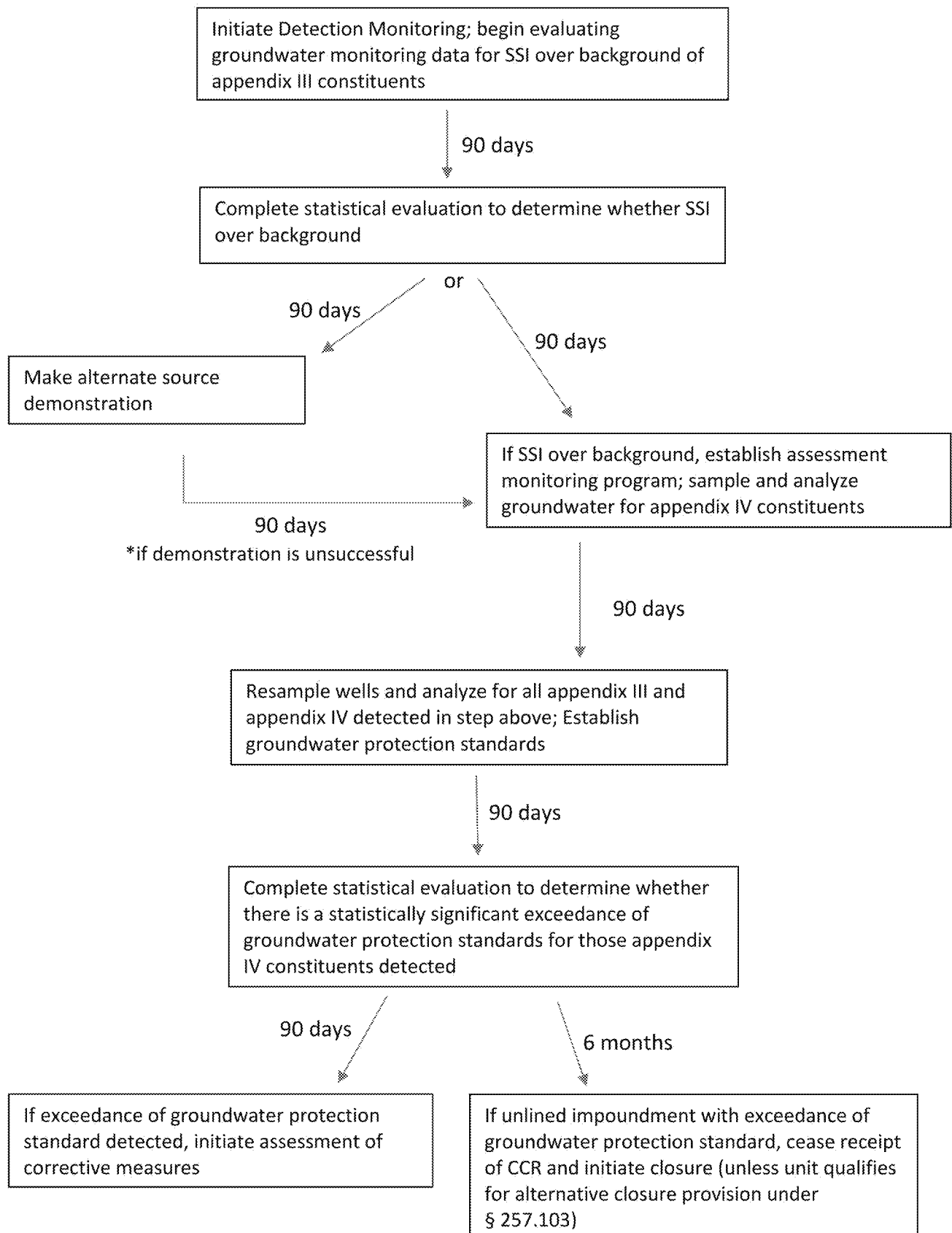
Sincerely,

A handwritten signature in black ink, appearing to read 'J. Roewer', with a large, stylized initial 'J' and a horizontal line extending to the right.

James Roewer
USWAG Executive Director

cc: Byron Brown
Barnes Johnson

Groundwater Monitoring Flow Chart



Timeline for Facilities That Elect to Make an Alternate Source Demonstration Under § 257.94(e)(2)			
Triggering Event	Action Required due to Triggering Event	Time Frame to Complete Action*	Regulatory Citation
Deadline for groundwater monitoring program	Install groundwater monitoring system, develop program, initiate detection monitoring and begin evaluating for statistically significant increase (SSI) over background.	October 17, 2017	§ 257.90(b) § 257.94(b)
Initiation of groundwater monitoring program	Complete statistical evaluation to determine if there is an SSI over background for Appendix III constituents.	90 days (January 15, 2018)	§ 257.93(h)(2)
SSI in detection monitoring	Demonstrate SSI was result of error or other source ("alternate source demonstration").	90 days (April 15, 2018)	§ 257.94(e)(2)
Failure to demonstrate SSI was result of error or other source under § 257.94(e)(2)	Establish assessment monitoring program; sample and analyze groundwater for appendix IV constituents.	90 days (July 14, 2018)	§ 257.95(b)
Results obtained from samples taken under § 257.95(b)	Resample all wells and conduct analyses for all Appendix III constituents and those Appendix IV constituents detected in the step above.	90 days (October 12, 2018)	§ 257.95(d)(1)
Results obtained from samples taken under § 257.95(d)(1)	Complete statistical evaluation to determine whether there is an exceedance of groundwater protection standards for appendix IV constituents detected.	90 days (January 10, 2019)	Unspecified; assume 90 days
Appendix IV constituent detected at statistically significant level above GPS in assessment monitoring	Initiate assessment of corrective measures or demonstrate that exceedance of GPS was error or caused by other source.	90 days (April 10, 2019)	§ 257.95(g)(3)
For unlined CCR impoundments, an Appendix IV constituent detected at statistically significant level above GPS in assessment monitoring	Cease receipt of CCR and initiate closure of impoundment (unless the unit qualifies for the rule's alternative closure provision under § 257.103).	6 months (July 10, 2019)	§ 257.95(g)(5); § 257.101(a)(1)

*Specific dates provided assume that there is an SSI over background in the first round of detection monitoring and an exceedance of a groundwater protection standard in the first round of assessment monitoring.

Timeline for Facilities That DO NOT Elect to Make an Alternate Source Demonstration Under § 257.94(e)(2)			
Triggering Event	Action Required due to Triggering Event	Time Frame to Complete Action*	Regulatory Citation
Deadline for groundwater monitoring program	Install groundwater monitoring system, develop program, initiate detection monitoring and begin evaluating for statistically significant increase (SSI) over background.	October 17, 2017	§ 257.90(b) § 257.94(b)
Initiation of groundwater monitoring program	Complete statistical evaluation to determine if there is SSI over background for Appendix III constituents.	90 days (January 15, 2018)	§ 257.93(h)(2)
SSI in detection monitoring	Establish assessment monitoring program; sample and analyze groundwater for appendix IV constituents.	90 days (April 15, 2018)	§ 257.95(b)
Results obtained from samples taken under § 257.95(b)	Resample all wells and conduct analyses for all Appendix III constituents and those Appendix IV constituents detected in the step above.	90 days (July 14, 2018)	§ 257.95(d)(1)
Results obtained from samples taken under § 257.95(d)(1)	Complete statistical evaluation to determine if there is an exceedance of groundwater protection standards for appendix IV constituents detected.	90 days (October 12, 2018)	Unspecified; assume 90 days
Appendix IV constituent detected at statistically significant level above GPS in assessment monitoring	Initiate assessment of corrective measures or demonstrate that exceedance of GPS was error or caused by other source.	90 days (January 10, 2019)	§ 257.95(g)(3)
For unlined CCR impoundments, an Appendix IV constituent detected at statistically significant level above GPS in assessment monitoring	Cease receipt of CCR and initiate closure of impoundment (unless unit qualifies for the rule's alternative closure provision under § 257.103).	6 months (April 12, 2019)	§ 257.95(g)(5); § 257.101(a)(1)

*Specific dates provided assume that there is an SSI over background in the first round of detection monitoring and an exceedance of a groundwater protection standard in the first round of assessment monitoring.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

JAN 26 2018

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

Mr. James Roewer
c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, D.C. 20004

Mr. Douglas Green
Ms. Margaret Fawal
Venable LLP
600 Massachusetts Avenue, NW
Washington, D.C. 20001

Re: Coal Combustion Residuals Rule Groundwater Monitoring Requirements

Dear Ms. Fawal, Mr. Green, and Mr. Roewer:

My office has been asked to respond to the letter from the Utility Solid Waste Activities Group (USWAG), dated November 27, 2017, to the U.S. Environmental Protection Agency (EPA), requesting confirmation with regard to your interpretation of the timing for two specific requirements in the Coal Combustion Residuals (CCR) Rule's groundwater monitoring provisions: (1) the timing to establish an assessment monitoring program if an owner/operator is unable to successfully make an alternate source demonstration in detection monitoring under 40 C.F.R. § 257.94(e)(2); and (2) the timing for conducting a statistical evaluation on the data collected under the assessment monitoring program. This responds in part to that November 27 letter.

I. Alternate Source Demonstration in Detection Monitoring

EPA agrees with your interpretation that the 90-day time period for conducting an alternate source demonstration in 40 C.F.R. § 257.94(e)(2) is separate from, and does not run concurrently with, the 90-day time frame in § 257.94(e)(1) or § 257.95(b).

40 C.F.R. § 257.94(e)(1) expressly provides that paragraph (e)(2) serves as an exception to the requirement that an owner or operator establish an assessment monitoring program within 90 days of detecting a statistically significant increase over background levels for any Appendix III constituent. ("Except as provided for in paragraph (e)(2) of this section, . . ."). Paragraph (e)(2) in turn provides that instead of initiating an assessment monitoring program within 90 days of such detection, the owner or operator may attempt to "demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase

resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality.” The regulation further provides that, “[i]f a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section.” If, at the end of that 90-day timeframe, the owner/operator is not able to successfully make this demonstration, the rule requires the owner/operator to “initiate an assessment monitoring program as required under § 257.95.”

Consistent with these provisions, EPA interprets 40 C.F.R. § 257.95(b) such that an assessment monitoring program is “triggered” either: (1) on the date an SSI is detected in a round of sampling taken under § 257.94(b) if an owner/operator elects not to make an alternate source demonstration under § 257.94(e)(2); or (2) at the end of the 90-day period in § 257.94(e)(2) if an owner/operator tries but cannot successfully make an alternate source demonstration under § 257.94(e)(2).

Note that this interpretation of the regulations mirrors the discussion of these provisions in the preamble to the final rule. As EPA explained,

The owner or operator has the opportunity to demonstrate that a source other than the CCR unit caused the statistically significant increase or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation or a natural variation in groundwater quality. Within 90 days, the owner or operator must prepare a report documenting this demonstration which must then be certified by a qualified professional engineer verifying the accuracy of the information in the report. If a successful demonstration is made within 90 days, the owner or operator may continue detection monitoring. If a successful demonstration is not made within 90 days, the owner or operator must initiate assessment monitoring.

Commenters raised concern that 90 days would not be sufficient to complete all of the activities necessary to determine whether the detection of an SSI was from another source than the CCR unit or was based on inaccurate results. The Agency recognizes that in some circumstances it could take more than 90 days to resample and have laboratories conduct new analyses, or to conduct field investigations to determine that another source is causing the contamination. As a result, § 257.94(e)(3) does not place an ultimate time limit for owners and operators to complete the demonstration. However, if after 90 days the owner or operator has not made a successful demonstration, (s)he must begin an assessment monitoring program.

80 Fed. Reg. 21,302, 21,404 (Apr. 17, 2015). *See also id.* at 21406 (contrasting the 90-day time period for making an alternate source demonstration pursuant to § 257.95(g)(3)(ii)).

2. Statistical Evaluation of Assessment Monitoring Data

USWAG also requested that EPA confirm your interpretation of the time frame for completing a statistical evaluation of the groundwater data collected during assessment monitoring in order to determine whether there is an exceedance of the groundwater protection standard. In your view, the regulations do not specify a specific timeframe for completing the statistical evaluation of these data. In support of this interpretation, you note that under § 257.95(b), the owner/operator must sample and analyze the groundwater for all appendix IV constituents within 90 days of triggering an assessment monitoring program; and that under § 257.95(d)(1), within 90 days of obtaining the results under § 257.95(b), the owner/operator must resample and analyze the groundwater for all appendix III constituents and those appendix IV constituents detected in § 257.95(b). The regulations then require the owner/operator to initiate an assessment of corrective measures within 90 days of detecting an appendix IV constituent at a

statistically significant level above the groundwater protection standard (40 C.F.R. § 257.95(g)(3)). On this basis, USWAG interprets the regulation to provide, at a minimum, that owners/operators have 90 days to conduct the statistical evaluation following completion of the sampling and analysis in § 257.95(d)(1).

EPA is still considering the issues you have raised regarding these provisions of the CCR Rule, and is therefore not in a position to provide a response at this time. I understand the need to provide timely guidance to facilities and will communicate EPA's views as soon as is feasible.

In the interim, if you have questions regarding this letter, please contact me at (703) 308-8895 or Frank Behan at (703) 308-8476.

Sincerely,

A handwritten signature in black ink, appearing to read "Barnes Johnson", with a stylized, flowing script.

Barnes Johnson, Director
Office of Resource Conservation and Recovery

Message

From: Gary Smith [Gary.Smith@powersouth.com]
Sent: 3/28/2018 3:07:44 PM
To: Brown, Byron [brown.byron@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]
Subject: CCR Remand Rule
Attachments: CCR and Non-CCR Capacity - Proposal 3-26-2018.docx; CCR capacity - Detailed Statement 3-26-2018.docx; CCR capacity - Exec Summ 3-26-2018.docx

Flag: Flag for follow up

Byron / David:

I was asked to forward you the attached working papers on the proposed CCR Remand Rule. The Remand Rule contains a provision not in the original CCR Rule that provides PowerSouth more difficulty than the original Rule.

I quote from the first paper: *EPA discussed Section 257.103(a) and (b) of EPA's regulations. EPA observed that the showing of a lack of alternative disposal capacity allows the continued placement of CCR, "and only CCR, in a unit designated to close for cause." That statement has been interpreted as prohibiting the use of a CCR surface impoundment in that situation from accepting non-CCR wastewater under any circumstances.*

We propose to continue to operate our ash holding ponds until 2023 when the ELG will likely require closure of the ash holding ponds and a move to dry ash handling or complete plant closure. That decision would be based upon the replacement for the CPP for environmental compliance and economic feasibility of maintaining our coal plant. The new non-CCR waste stream provision added to the Remand Rule will require a very substantial investment in the movement of non-CCR waste streams which currently go into the ash holding ponds into other holding facilities. In essence the provision moves our decision to close the plant up from 2023 until the present.

We propose that Section 257.103(b)(iii) be removed from the Remand Rule.

Please let me know if you have any questions. We can provide more background.

Gary L. Smith
President & CEO
PowerSouth Energy Cooperative
P.O. Box 550
Andalusia, AL 36420
Ex. 6 PP / Ex. 7(C)
gary.smith@powersouth.com

This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If the reader of this message is not the intended

recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error or no longer wish to receive e-mail from this sender, please forward a copy of this message to abuse@powersouth.com to notify the sender or to be removed from the sender's distribution list.

Proposals to Address the Lack of Alternative Disposal Capacity Showings

March 26, 2018

(1) Lack of alternative CCR disposal capacity. The following language is suggested for inclusion in the preamble to the final remand rule or otherwise as a statement of EPA policy:

In the preamble to the proposed remand rule, EPA discussed Section 257.103(a) and (b) of EPA's regulations. EPA observed that the showing of a lack of alternative disposal capacity allows the continued placement of CCR, "and only CCR, in a unit designated to close for cause." That statement has been interpreted as prohibiting the use of a CCR surface impoundment in that situation from accepting non-CCR wastewater under any circumstances.

This interpretation is problematic at facilities where an alternative wastewater treatment facility is not available, particularly if groundwater requirements or a location restriction trigger a closure requirement at the earliest possible time (i.e., summer or fall 2018). The rule requires the owner or operator to cease sending CCR and non-CCR waste to the disposal unit within six months. Development of new wastewater treatment capacity, including design, procurement, construction, and calibration during initial startup, can be a lengthy and difficult process. Even where efforts to that end were initiated some time ago, wastewater facilities may not be completely ready. Where those efforts have not begun, depending on the volume and type of wastewater requiring treatment, compliance may be impossible.

EPA has long allowed a lawfully operating CCR surface impoundment to accept non-CCR wastewater, subject to the requirements of the Clean Water Act and any other applicable authorities. EPA has not withdrawn this longstanding policy. Upon further consideration, EPA clarifies that this policy continues to apply as long as the facility is otherwise authorized to remain in operation. Specifically, a facility that has demonstrated a lack of alternative CCR disposal capacity, whether due to no dry ash handling capacity or otherwise, may continue to use the CCR surface impoundment for wastewater management. This basis for continued use of the surface impoundment for non-CCR wastewater is separate from any showing based exclusively on a lack of capacity for non-CCR wastestreams and applies independently. Subject to that qualification, the owner or operator must continue to observe all other requirements of Section 257.103 and any other applicable authorities.

(2) Lack of alternative capacity for non-CCR wastestreams. EPA should strike proposed § 257.103(b)(iii). EPA lacks the institutional expertise to make judgments on electric reliability, particularly where EPA relies on projections for reliability regions and sub-regions to develop RCRA requirements that apply in a discriminatory fashion from place to place.

**Demonstration of Lack of CCR Disposal Capacity:
EPA's Change in Position Threatens Power Plant Operations
March 26, 2018**

1. Statement of the Issue

In the preamble to the final rule for the management and disposal of coal combustion residuals (CCR),¹ the Environmental Protection Agency (EPA) provided specific assurances for facilities that lack alternative disposal capacity due to wet handling of coal ash. Utilities have relied on EPA's assurances in the development of CCR compliance strategies. However, in the preamble to its recent proposed rule,² EPA contradicted its prior assurances and undermined the strategy utilities have relied on for three years. EPA now says a utility in this position cannot use the ash pond for non-CCR wastewater.

With possible closure triggers looming, there is not enough time to build the new facilities that would be required to comply under EPA's new compliance theory. That places utilities in the position of plant shutdown as the only way to achieve compliance. EPA's action also contradicts EPA's previous statement that significant investments necessary for CCR rule compliance would not be required before EPA clarified utilities' obligations under other major rules. Those obligations are still unknown today.

EPA's action is unfair to affected utilities and the communities they serve. It also represents a reversal of policy that is inadequately explained and, therefore, violates the Administrative Procedure Act (APA). EPA should clarify, consistent with longstanding EPA policy and industry practice, that a lawfully operating CCR disposal facility—including a facility that has shown a lack of alternative disposal capacity—can also continue to co-manage non-CCR waste streams.

2. EPA Has Previously Explained that the Showing of Lack of Alternative Disposal Capacity Can Be Based on the Lack of Dry Handling Capacity.

Under § 257.103(a)(1), a CCR unit that is otherwise required to close may continue in operation “due to the absence of alternative disposal capacity both on-site and off-site of the facility,” subject to satisfying a series of conditions. The preamble makes plain EPA intended to allow reliance on the alternative disposal capacity showing based on a lack of dry handling capacity. EPA stated as follows:

¹ 80 Fed. Reg. 20,301 (Apr. 17, 2015).

² 83 Fed. Reg. 11,584 (Mar. 15, 2018).

The Agency recognizes that the circumstance may arise where a facility's only disposal capacity, both on-site and off-site, is in a CCR unit that has triggered the closure requirements in § 257.101(a), (b)(1), or (d). As a result, the facility may be faced with either violating the closure requirements in § 257.101 by continuing to place CCR in a unit that is required to close, or having to cease generating power at that facility because there is no place in which to dispose of the resulting waste. ***For example, while it is possible to transport dry ash off-site to alternate disposal facility that simply is not feasible for wet-generated CCR. Nor can facilities immediately convert to dry handling systems.*** As noted previously, the law cannot compel actions that are physically impossible, and it is incumbent on EPA to develop a regulation that does not in essence establish such a standard.³

3. EPA Has Long Been Aware of this Common Practice.

The continued availability of the ash pond is critically important, not only for CCR management, but also to manage the various wastewater streams generated at a coal-fired power plant. Most utilities with ash ponds have used them to manage the other wastewater streams generated from plant operations.

EPA has long been aware of the practice of using ash ponds for non-CCR wastewater treatment. As early as 1981, EPA acknowledged and approved of the practice of comanaging "boiler cleaning solutions, boiler blowdown, demineralizer regenerant, pyrites, cooling tower blowdown, or any wastes of power plant origin whose co-treatment with fly ash, bottom ash, slag and flue gas emission control sludges is regulated under State-or-EPA-sanctioned management or treatment plans."⁴ EPA has discussed the various waste streams comanaged in ash ponds from time to time since then.⁵ EPA has not withdrawn its approval of using the ash pond for wastewater management, whether in the final CCR rule, the proposed remand rule, or otherwise.

Obviously, a utility with this existing capacity for wastewater management would not saddle its customers or ratepayers with the unnecessary expense of building, operating and maintaining duplicative, parallel wastewater treatment capacity. Rather, it has been the virtually universal practice of coal-fired plants to use the existing ash pond for non-CCR wastewater management to the extent it is lawful to do so.

³ 80 Fed. Reg. at 21,423 (emphasis added).

⁴ Letter from Gary N. Dietrich, Assoc. Dep. Ass't Admin. for Solid Waste, EPA, to Paul Emler, Jr., Chairman, Utility Solid Waste Activities Group (Jan. 13, 1981) (internal quotations omitted). This document was included in EPA's docket for the 2015 CCR rule as document number EPA-HQ-RCRA-2009-0640-11988.

⁵ See, for example, EPA's regulatory determination on low volume wastes. 65 Fed. Reg. 32,214 (May 22, 2000).

4. EPA Said It Did Not Intend to Force Power Plants to Stop Operating Due to Short Term Compliance Issues.

In EPA's words, again excerpted from the discussion of the showing of a lack of alternative disposal capacity under § 257.103(a):

Should a facility choose to comply with the regulation and stop generating power, there would be significant risks to human health that would arise if a community would be left without power for an extended period of time. As information in the record demonstrates, obtaining alternative capacity can sometimes require a substantial amount of time (e.g., if the facility needs to construct alternative capacity, including potentially the need to locate an alternative site or purchase additional property). EPA recognizes that there are also significant risks to human health and the environment, as demonstrated throughout this preamble, from a leaking or improperly sited CCR unit, and that these risks justify requiring those units to either retrofit to meet the federal criteria established in the final rule or close. EPA also acknowledges that in the interim period while the owner or operator seeks to obtain additional capacity, ***the risks associated with the continued use of these units will be significant. However, the Agency believes that the risks to the wider community from the disruption of power over the short-term outweigh the risks associated with the increased groundwater contamination from continued use of these units.*** This conclusion is further buttressed by the fact that during this interim period the risks associated with allowing these units to continue to receive CCR are mitigated by all of the other requirements of the rule with which the facility must continue to comply, including the requirements to continue groundwater monitoring and corrective action.⁶

Thus, EPA also made clear it was not the agency's intent to force a power plant to shut down solely because of an inability to manage CCR due to this rule's imposition of a closure requirement. In other words, EPA was not forcing utilities to choose between maintaining compliance and running the plant.

5. EPA Said Utilities Would Have a Full Understanding of Water and Air Obligations Before Major Investments in CCR Compliance.

The cumulative cost of complying with new waste, water, and air programs could render ongoing operation of some plants uneconomic. If a specific plant cannot also sustain the cost of new wastewater management capacity and air emission control technology, then the utility

⁶ 80 Fed. Reg. at 21,423 (emphasis added).

should not waste money on new investments for CCR compliance. Critically, it is impossible for the utility to make this calculation until its obligations are known.

EPA recognized this reality and indicated utilities would not be forced into costly compliance decisions under the CCR rule before the utility's obligations under critical other regulatory programs was known. In EPA's words:

In establishing these timeframes [for CCR compliance], EPA also accounted for other Agency rulemakings that may affect owners or operators of CCR units, namely the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category and the Carbon Pollution Emission Guidelines and the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (Clean Power Plan).

The ELG rule is scheduled to be finalized in September 2015 and its effective date is 60 days following its publication. Thus, there is ample time for the owners and operators of CCR units to understand the requirements of both regulations and to make the appropriate business decisions.⁷

However, contrary to this assurance, EPA has yet to finalize utilities' obligations under the ELG rule and the Clean Power Plan. Thus, the costs of compliance are not yet known. Particularly where the continued economic viability of a given power plant is in question, this makes it a challenge for the utility to avoid incurring pointless expenditures on behalf of its customers. Under present circumstances, a utility must postpone CCR upgrades as long as lawfully possible, in order to get the most complete picture of likely compliance costs.

6. The Preamble to the Remand Rule Contradicts EPA's Previous Statements and Forces Utilities to Cease Power Plant Operations.

In the preamble to the remand rule, EPA describes the alternative closure showing based on lack of alternative disposal capacity and a similar provision available in exchange for a commitment to close the plant within five years as follows: "Under either of these alternative closure provisions, owners or operators may continue to place CCR, **and only CCR**, in a unit designated to close for cause for an extended period of time."⁸ This is a new interpretation of the alternative closure provisions of § 257.103(a) and (b).

EPA's final CCR rule allowed a showing of a lack of alternative capacity based on no dry ash handling capacity, and for more than 35 years, EPA has expressly and repeatedly approved of

⁷ 80 Fed. Reg. at 21,428.

⁸ 83 Fed. Reg. at 11,594 (emphasis added).

using the ash pond for wastewater management. EPA reversed course in the remand rule preamble with three short words—“and only CCR”—without acknowledging the change in policy, much less explaining it.

Under the Administrative Procedure Act, EPA must avoid actions that are arbitrary and capricious.⁹ When an agency’s action represents a departure from existing policy, the agency must articulate the reason for its change.¹⁰ “To be sure, the requirement that an agency provide a reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position.”¹¹ In this case, EPA did not even acknowledge the policy it changes, much less explain it, and so the agency is violating this principle of administrative law.

Once closure is triggered under the CCR rule, the utility has only six months to stop sending CCR and non-CCR wastewater to the ash pond. It is not possible to site new wastewater treatment facilities in that length of time. Perhaps anticipating the draconian effect of this statement, EPA also announces a new “should have known” policy. Referring to information received from a utility trade association, EPA states as follows:

This letter documents several alternative disposal methods that take only two or three years to construct. It thus appears to generally be feasible for facilities with knowledge of leaking units to begin and complete the construction of these ponds, tanks, and other capacity in the time that the rule lays forth for closure to commence. If the facilities that believe that their units are leaking, or likely leaking, had already begun this construction when they first learned of the regulatory requirements, many would be nearing completion as of this rulemaking.¹²

Apparently, EPA now believes compliance decisions and investments should be incurred *before* CCR compliance obligations are known, based on the procedures EPA itself established in the CCR rule. That necessarily means the other air and water obligations EPA may impose also are not known, contrary to the assurances provided by EPA in the preamble to the final CCR rule.

The CCR rule prescribes specific procedures and demonstrations to determine whether an ash pond may continue in operation. Rather than follow those requirements, EPA now says utilities should make guesses based on what they think might be required in the future, based on speculation as to the conclusion of processes and determinations that are still in process. Not only that, but utilities should have anticipated EPA’s statement several years ago, as closure

⁹ 5 U.S.C. § 706(2)(A).

¹⁰ See, e.g., *Fed. Communications Comm’n v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1810-11 (2009).

¹¹ *Id.* (emphasis in original).

¹² 83 Fed. Reg. at 11,596.

triggers may apply as soon as later this year. Specifically, determinations may be available as soon as July 2018 as to groundwater issues and October 2018 as to location restrictions.

As a theory of regulatory interpretation, EPA's "should have known" policy is absurd on its face. It is also contrary to EPA's prior statement that utilities would have the benefit of knowledge of requirements under its waste, water, and air programs before committing to expensive investments necessary for compliance. To apply such a theory retroactively to plants who may face a closure trigger this summer or fall is deeply troubling and unfair.

7. EPA Should Confirm that Lawfully Operating CCR Ponds May Continue to Accept Non-CCR Wastewater.

EPA's change in position is unlawful and unfair. In the preamble to the final remand rule or otherwise, EPA should clarify that a plant with lawfully operating CCR pond—including a pond operating under the lack of alternative disposal capacity demonstration, whether due to a lack of dry handling capacity or otherwise—may continue to use that pond for wastewater treatment and disposal, consistent with longstanding EPA policy.

**Demonstration of Lack of CCR Disposal Capacity:
EPA's Change in Position Threatens Power Plant Operations
March 26, 2018**

Executive Summary

- In issuing the 2015 CCR rule, EPA said utilities could rely on a lack of dry handling capacity to show a lack of alternative disposal capacity for purposes of § 257.103(a)(1). That allows a utility to continue using the ash pond temporarily, even if the rule otherwise requires closure. This demonstration is critically important because, as EPA acknowledged, off-site disposal “simply is not feasible for wet-generated CCR.” As EPA noted, facilities cannot “immediately convert to dry handling systems.”
- It also has been common industry practice, which EPA has thoroughly documented over the past several decades, to use ash ponds for management of various non-CCR wastewater streams. Where an ash pond was available for that purpose, an economically rational utility would not typically build a separate, parallel wastewater treatment system.
- **Obviously, a utility that relies primarily on ash ponds for CCR disposal and wastewater management must have access to those facilities in order to run the power plant.**
- In explaining § 257.103(a)(1), EPA stated it did not intend to stop *plant* operations simply because the *ash pond* had triggered a closure requirement. In EPA's words, “the risks to the wider community from the disruption of power over the short-term outweigh the risks associated with the increased groundwater contamination from continued use of these units.”
- EPA also indicated its intent not to force utilities to make costly CCR upgrades before understanding their obligations under the ELG rule and the Clean Power Plan. Those obligations are still under consideration today.
- Now EPA says the showing under § 257.103(a) and (b) is available for “only CCR,” which excludes non-CCR wastewater. If that is the case, for a facility that wet-slurries CCR and has no other wastewater capacity, the only way to achieve compliance is to stop running the plant. That is contrary to EPA's previous explanation of its interpretation of § 257.103. In making this statement, EPA did not even acknowledge its previous policy, much less explain the change as required by law.
- **EPA's change in position will force a utility to cease power plant operations as soon as early 2019 if it lacks alternative wastewater management capacity.** To impose this interpretation is unfair given the lack of notice to affected utilities, unlawful because it represents a substantial change in policy that the agency has failed to explain, and an enormous and unnecessary burden to affected utilities and their customers.
- **EPA should clarify, consistent with longstanding EPA policy and industry practice, that a lawfully operating CCR disposal facility—including a facility that has shown a lack of alternative disposal capacity—can also continue to co-manage non-CCR waste streams.**

Message

From: Gary Smith [Gary.Smith@powersouth.com]
Sent: 3/28/2018 4:32:20 PM
To: Brown, Byron [brown.byron@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]
Subject: CCR Remand Rule
Attachments: 20298559-v2-Non-CCR Waste Stream Clarification.docx

Flag: Flag for follow up

Byron / David:

In addition to the papers I sent you this morning on non-CCR waste streams, I have this paper on the same issue drafted by USWAG.

Gary L. Smith
President & CEO
PowerSouth Energy Cooperative
P.O. Box 550
Andalusia, AL 36420
Ex. 6 PP / Ex. 7(C)
gary.smith@powersouth.com

This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error or no longer wish to receive e-mail from this sender, please forward a copy of this message to abuse@powersouth.com to notify the sender or to be removed from the sender's distribution list.

EPA's Preamble Statement Incorrectly Characterizes the Existing Alternative Closure Provision

In proposing to amend the alternative closure provision at 40 C.F.R. § 257.103, EPA has incorrectly characterized the scope of the *existing* alternative closure provision in a manner at odds with the plain language of the regulatory text. EPA should not wait for issuance of the final rule to correct this error, but should issue a clarification immediately to prevent companies from having to spending of millions of dollars in undertaking significant and unnecessary operating modifications and/or forcing early power plant closures based on this misinterpretation.

In describing the proposed amendment to § 257.103, EPA incorrectly states that facilities qualifying for the *existing* exemption because they have no alternative disposal capacity for CCR “may continue to place CCR, *and only CCR*” in the designated unit.” 83 Fed. Reg. 11584, 11594 (emphasis added); *see also id.* at 11595 (“The current regulation is explicit that the alternative closure provisions only allows for continued disposal of CCR . . .”). These statements incorrectly characterize the operation of the existing alternative closure provision.

The alternative closure provision is an exemption to the rule’s prohibition on the placement of CCR and non-CCR waste streams in an unlined impoundment that is otherwise triggered when a facility fails to meet a groundwater protection standard. 40 C.F.R. § 257.101(a)(1). Specifically, the rule provides that within six months of failing to meet such standard, the owner/operator must cease placing CCR and non-CCR waste streams in the unit and either retrofit or close the unit. Importantly, however, the rule also states that “[t]he timeframe specified in paragraph (a)(1)” —*i.e.*, the six month timeframe for ceasing the placement of CCR *and* non-CCR waste streams in the unit— “*does not apply* if the owner or operator complies with the alternative closure procedures specified in § 257.103.” *Id.* at § 257.101(a)(3) (emphasis added). Therefore, if an owner/operator qualifies for the existing alternative closure provision in 40 C.F.R. § 257.103, the six month timeframe never begins to run in the first instance and the prohibition on the placement of CCR *and* non-CCR waste streams into an unlined impoundment does not attach.

EPA has ignored this regulatory language, stating that the rule’s alternative closure provision allows only for the continued disposal of CCR once the necessary demonstration is made. While it’s true that the alternative closure provision specifically references only the continued disposal of CCR, this allowance necessarily encompasses the continued management of non-CCR waste streams in the unit as well. This is the case for two reasons. First, any other interpretation would be at odds with the plain language in § 257.101(a)(3) making clear that the six month timeframe for prohibiting the disposal of CCR and non-CCR waste streams in the unit *does not* attach if the facility demonstrates that there is no alternative capacity for CCR. Second, it was not necessary for EPA to specifically include a reference to non-CCR waste streams in the alternative closure provision, as the CCR rule regulates *only* the disposal of CCR, not the disposal of non-CCR waste streams. *See* 40 C.F.R. § 257.50(b) (“This subpart applies to

owners and operators of . . . surface impoundments, including the lateral expansion of such units that dispose of or otherwise *engage in solid waste management of CCR*”) (emphasis added). This construction gives proper meaning to all the terms in the relevant regulatory text.

Even though EPA has mischaracterized the scope of the existing alternative closure provision and this error must be corrected immediately, it also remains critically important that EPA move forward with expanding the scope of the provision to allow for consideration of non-CCR waste streams. As explained in USWAG’s December 12, 2016 letter—which details the need for the proposed amendment—there will be instances when a facility is able to find alternative disposal capacity for CCR (*e.g.*, is able to convert to dry handling), but still must utilize the impoundments to manage non-CCR waste streams that are necessarily generated during the production of power. There may be other instances where a facility has switched fuel sources from coal to gas, and therefore is no longer producing CCR, but is still managing non-CCR waste streams from gas-fired operations in the CCR unit. The current alternative closure provision does not address these situations. Therefore, it is imperative that the alternative closure provision be amended to allow for the consideration of non-CCR waste streams when determining the availability of disposal capacity under 40 C.F.R. § 257.103.

Message

From: Roewer, James [JRoewer@eei.org]
Sent: 12/28/2018 1:27:30 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: Wright, Peter [wright.peter@epa.gov]; Huggins, Richard [Huggins.Richard@epa.gov]; 'HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com)'
[HAROLD.REGISTERJR@cmsenergy.com]; 'Doug Green' [dhgreen@venable.com]; Cook, Steven
[cook.steven@epa.gov]; ORCR IO [ORCR_IO@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]; Elliott, Ross
[Elliott.Ross@epa.gov]
Subject: RE: A Performance Evaluation Methodology for Alternative Liner Systems

Thanks Barnes. Thursday January 17th at 10 AM works for us.

From: Johnson, Barnes <Johnson.Barnes@epa.gov>
Sent: Thursday, December 27, 2018 4:41 PM
To: Roewer, James <JRoewer@eei.org>
Cc: Wright, Peter <wright.peter@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; 'HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com)'
<HAROLD.REGISTERJR@cmsenergy.com>; 'Doug Green' <dhgreen@venable.com>; Cook, Steven
<cook.steven@epa.gov>; ORCR IO <ORCR_IO@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross
<Elliott.Ross@epa.gov>
Subject: RE: A Performance Evaluation Methodology for Alternative Liner Systems

This email originated from an external sender. Use caution before clicking links or opening attachments. For more information, visit [The Grid](#). Questions? Please contact ITSupport@eei.org or ext. 5100.

Dear Jim,

We are happy to meet on this topic. Steven asked us to be on point for this meeting. Steven will join us if his schedule allows.

Here are three options to consider for the week of Jan 14th: Tuesday 1/15 at 4 PM; Wednesday 1/16 at 4 PM or Thursday January 17th at 10 AM all in Potomac Yard. Please let us know if any of these times work on your end. Feel free to call if you wish to discuss (703-308-8635).

Sincerely,

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](#)

From: Roewer, James <JRoewer@eei.org>
Sent: Tuesday, December 18, 2018 2:25 PM
To: Cook, Steven <cook.steven@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Wright, Peter <wright.peter@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; 'HAROLD D. REGISTER JR

<HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com)'

<HAROLD.REGISTERJR@cmsenergy.com>; 'Doug Green' <dhgreen@venable.com>

Subject: A Performance Evaluation Methodology for Alternative Liner Systems

Steven and Barnes,

Following-up on the recent submissions by various USWAG members regarding the performance of their alternative liner systems (including natural clay liners and alternative composite liner systems), we had Gradient prepare the attached report further evaluating the performance of alternative liners vis-à-vis the single composite liner specified in the CCR Rule. The report identifies a methodology for facilities to demonstrate their alternative liner systems perform as well, if not better, than a single composite liner system. This evaluation involves a comparative methodology involving both the hydraulic flux and travel time through the liner of the subject liner systems. We believe the attached report, and the earlier submissions by USWAG members, provide a sound technical basis for EPA moving forward in developing a proposal for a new liner equivalency demonstration option in the CCR rule. If such liner systems perform as well as, if not better than, the composite liner systems defined in the rule, there is no basis for classifying these equally effective systems as "unlined" for purposes of the CCR rule.

We would welcome the opportunity to meet with you and your staff to further discuss this matter. We would suggest meeting sometime during the week of January 14th. Thank you in advance for letting us know if you are available during this time to meet with us.

Regards,

Jim

Jim Roewer
Executive Director
USWAG



From: Roewer, James [JRoewer@eei.org]
Sent: 7/10/2017 7:03:52 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: Doug Green [dhgreen@venable.com]; HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com) [HAROLD.REGISTERJR@cmsenergy.com]
Subject: Alternative Closure Provisions & Electric Reliability Issues
Attachments: EEI Assessment of CCR Impacts on Electric Reliability Final_7_10_17 with attachment.pdf

Barnes, attached is the power reliability analysis that we had EEI prepare in a follow-up to our recent meeting regarding EPA's development of a proposal to amend the CCR rule's alternative closure provision to allow for the consideration of non-CCR waste streams.

Recall that the problem we are trying to address is a scenario where a power generating station needs to manage its non-CCR wastewaters in an unlined CCR surface impoundment that is otherwise required to close because groundwater monitoring data show that the impoundment has exceeded an applicable groundwater protection standard. Because the rule's alternative closure provision in 257.013 currently does not allow for the consideration of the lack of disposal capacity for non-CCR wastewaters managed in these impoundments, there is no opportunity for the owner/operator to utilize the provision and keep the impoundment operating for a limited period of time until alternative wastewater management capacity is developed. As a result, the impoundment must close and, with no alternative management option for the non-CCR wastewater, the power plant also must cease power generation.

As EPA correctly recognized in developing the current alternative closure provision, the risk of the loss of power generation in these circumstances outweighs the risk of allowing the impoundment to remain open for a limited period of time, subject to all applicable CCR requirements (including corrective action), until such time as alternative disposal capacity is developed. The EEI reliability analysis shows that this risk trade-off is the same in the case of non-CCR waste streams.

Specifically, the EEI analysis evaluates the threats to power reliability in the various power generating regions across the country if power generating stations at which unlined CCR surface impoundments exist have to close due to an exceedance of a groundwater protection standard and, as a result, the power stations also have to cease operation since they have no management option for their non-CCR wastewaters. Not surprisingly, the regions in the country where there would be "significant impacts" to power reliability are the areas where coal-fired power generation constitutes a material portion of the power generation portfolio, including the MISO region (the Midwest, Eastern Great Plains and Texas), the SERC region (the South and Southeast) and the PJM region (the mid-Atlantic and Southeast). In the case of MISO and SERC, the report finds that both regions are "highly dependent on coal resources" and "[t]he apparent affect resulting from the loss of CCR Resources [i.e., the closure of CCR surface impoundments needed to manage non-CCR wastewaters at power stations] could have significant impacts within" the regions, "which could necessitate [the regions] to shed load, rely on imports or both in order [to] meet their peak load demands, as well as require additional resource contracts to support reliability reserves." These findings are consistent with the views expressed by the USWAG members in attendance at our recent meeting, including Southern Company (the South), AEP (the Midwest and Texas) and Consumers (the upper-Midwest), where they explained that certain of their power generating stations would face closure if the CCR impoundments managing non-CCR wastewaters were forced to close, thus leaving the power station with no wastewater management option for non-CCR wastewaters.

As we discussed, amending the CCR rule's alternative closure provision to allow for the consideration of the lack of disposal capacity for non-CCR wastewaters would help to avoid these real threats to power reliability.

Let me know if you have questions regarding the attached report. We are available to continue to assist EPA in developing this important proposal.

Regards,

Jim

Jim Roewer
Executive Director
USWAG



c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2096
202-556-5645
www.uswag.org

Message

From: Roewer, James [JRoewer@eei.org]
Sent: 7/31/2017 6:13:15 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
CC: Doug Green [dhgreen@venable.com]
Subject: Revised CCR Document
Attachments: EEI Assessment of CCR Impact on Electric Reliability Revised 7_27_17 v2.pdf

Barnes, attached is the EEI analysis of the potential impact on regional reliability from the closure of unlined surface impoundments.

The original table included data from Ventyx capacity database; the table has been revised to reflect data from the NERC Summer Reliability Assessment. Regarding the first column, we made a modification to the title of the first column and added a footnote. The title of this column previously said it was "All Generating Units" but the values taken from the NERC Summer Reliability Assessment Report were actually "Existing Certain Capacity" values which would be substantially less than ALL Generating Units. Existing Certain Capacity includes operable capacity expected to be available to serve load during the peak hour with firm transmission. This means that the resources are expected to be operational and have a guaranteed transmission path to serve load.

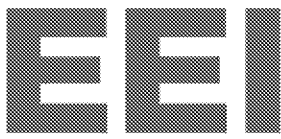
If you have questions, we can work to convene a meeting/discussion between the folks at EEI that pulled this information together and your team.

Jim

Jim Roewer
Executive Director
USWAG



c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2896
202-508-5645
www.uswag.org



Subject: Potential Electric Reliability Risks Due to Cessation of Power Generation as a Result of the Closure of Unlined Surface Impoundments Under 40 CFR Part 257.101 for the Failure to Meet Groundwater Protection Standards

EPA Docket ID: EPA-HQ-OLEM-2016-0274

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Extension of Compliance Deadlines for Certain Inactive Surface Impoundments; Response to Partial Vacatur

Summary of EEI Findings

As part of an internal EEI review to assess the potential impacts on electric reliability due to the possible inability of affected resource owners to sufficiently remediate certain coal combustion residuals (CCR) surface impoundments by the dates set forth in the above reference EPA Final Rule, EEI developed the following high level evaluation of the reliability impacts associated with forcing affected coal fired resources into a “Forced Outage”¹ mode. While the term Forced Outage is more typically used to describe a generating unit, transmission line or other facility that is out of service due to an equipment failure, the impact of a forced outage due to an entity’s inability to meet the EPA deadline would result in the same effect as an actual equipment failure since the resource would be unavailable for service.

Those reviewing the EEI findings should recognize that our findings were not part of any detailed planning study and provide a very high level review of possible worst case impacts on a regional level. Moreover, those reviewing our high level findings should consider the following:

1. This review only considered a worst case scenario due to the closure of unlined CCR impoundments not meeting groundwater protection standards. (i.e., all affected resources would be in a Forced Outage mode due to not meeting the compliance date for mitigating their CCR obligations).
2. When assessing the impact of CCR related outages, EEI utilized the published Anticipated Reserve Margin since this includes operable capacity expected to be available to serve load with firm transmission along with Tier 1 capacity and Firm Capacity Transfers.
3. No effort was made to consider the impact of “Prospective Reserves”, which broadly represent the inclusion of operable capacity that may lack firm transmission, Tier 2 capacity additions and nonfarm Capacity Transfers (imports minus exports) without firm contracts.

¹ NERC Glossary of Terms; Forced Outage: 1. The removal from service availability of a generating unit, transmission line, or other facility for emergency reasons. 2. The condition in which the equipment is unavailable due to unanticipated failure.

4. Reserve Margin impacts were only considered during “On Peak”² periods.
5. In the context of this review, it is considered that in order to maintain Reliable Operation³ of the BES, the Anticipated Reserve Margin⁴ as defined in sessional reliability assessments developed by NERC are to held be at or above the published Reference Reserve Margin⁵.
6. For purposes of this review, EEI used data from the NERC 2017 Summer Reliability Assessment⁶. No effort was done to consider similar impacts during winter months which may be more or less severe by region.
7. EEI recognizes that the likelihood of all CCR impacted resources not meeting the EPA imposed compliance deadline is highly unlikely.
8. EEI does not have sufficient insights to accurately predict the resource mix by fuel type beyond what has been provided in the NERC 2017 Summer Reliability Assessment.
9. The contribution of Coal Fired resources as considered in this review is as indicated in the NERC 2017 Summer Reliability Assessment and as identified as “On-Peak Expected Capacity: Generation Mix”.

EEI Findings:

Assessment Area	Potential Reliability Impact (<i>during “On-Peak” periods</i>)
ERCOT	Loss of Impacted CCR Coal Resources could result in the anticipated summer reserve margin for ERCOT dropping below the level identified as necessary to maintain regional reliability.
FRCC	Loss of Impacted CCR Coal Resources appears to be insufficient to affect regional reliability.
MISO	MISO is highly dependent on coal resources. The apparent affect resulting from the loss of CCR Resources could have significant impacts within this region, which could necessitate MISO to shed load, rely on imports or both in order meet their peak load demands as well as require additional resource contracts to support reliability reserves.
NPCC-Maritimes	No regional impacts
NPCC-New England	No regional impacts

² NERC Glossary of Terms; On-Peak: Those hours or other periods defined by NAESB business practices, contract, agreements, or guides as periods of higher electrical demand.

³ NERC Glossary of Terms; Reliable Operation: Operating the elements of the [Bulk-Power System] within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

⁴ Anticipated reserve margin is quantify of resource reserves that has been identified through a detailed planning assessments which can be expected to support BES reliability in the event of an unanticipated failure of a system element. (See NERC Reliability Standard: TPL-001-4)

⁵ The reference reserve margin is the reserve margin that has been identified by the regional planner as necessary to ensure Reliable Operation.

⁶

<http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2017%20Summer%20Assessment.pdf>

NPCC-New York	No regional impacts
PJM	Loss of Impacted CCR Coal Resources would result in the anticipated summer reserve margin for PJM dropping below the level identified as necessary to maintain regional reliability.
SERC	SERC is highly dependent on coal resources. The impact resulting from the loss of CCR Resources would be significant potentially requiring SERC to shed load, rely on imports or both in order meet their peak load requirements and reliability reserves.
SPP	Loss of Impacted CCR Coal Resources would result in the anticipated summer reserve margin for SPP dropping below the level identified as necessary to maintain regional reliability.
WECC	Loss of impacted CCR coal reserves would have marginal impacts on WECC reliability. While the loss of these reserves would cause WECC to fall below the reference reserve level, it would only fall slightly below that level.

Color Code: Red - Severe Impact; Orange - Moderate Impact; Green - No Impact

NERC Assessment Area	Nameplate Capacity (MW)				On-Peak Expected Capacity Of Coal by Region (NERC Summer Reliability Assessment)	Percent of Coal Fired Generating Capacity at Risk due to Unlined Surface Impoundments	Estimated Reserve Impact	2017 Summer Reference Margin Level	2017 Summer Anticipated Reserve Margin	Potential Reserve Margin due to CCR Forced Outages	Notes
	Existing Certain Capacity (NERC Summer Reliability Assessment)	All Coal-Fired Generating Units (ABB data)	All Generating Units at Plants with Unlined Surface Impoundments (ABB data)	All Coal-Fired Generating Units at Plants with Unlined Surface Impoundments (ABB data)							
ASCC	NA	164	81	81	3%	50%	1%	NA	NA	NA	
ERCOT	77,845	21,177	7,469	7,470	25%	35%	9%	13.75%	15.01%	6.2%	Loss of impacted CCR Resources could result in having inadequate reserves during peak periods.
FRCC	53,403	10,010	6,162	5,855	15%	58%	5%	15.00%	23.43%	18.0%	No impact
HCC	NA	203	0	0	0%	0%	0%	NA	NA	NA	
MISO	142,398	72,230	46,419	41,321	43%	57%	25%	15.80%	18.77%	1.9%	MISO is highly dependent of coal resources. The loss of impacted CCR Resources could have substantial impacts during peak periods.
NPCC-Maritimes	NA	0	0	0	0%	0%	0%	20.00%	90.99%	90.99%	No impacted resources
NPCC-New England	28,738	965	0	0	3%	0%	0%	15.10%	14.88%	14.9%	No impacted resources
NPCC-New York	38,581	1,738	0	0	4%	0%	0%	18.00%	28.54%	28.54%	No impacted resources
PJM	179,695	65,046	45,563	43,556	33%	67%	22%	16.60%	28.40%	6.3%	Loss of impacted CCR Resources could result in having inadequate reserves during peak periods.
SERC - Combined	160,776	56,130	68,810	48,960	32%	87%	27.91%	15.00%	25.35%	21.3%	SERC is highly dependent of coal resources. The loss of impacted CCR Resources could have substantial impacts during peak periods.
SERC-E	50,145	16,156	19,551	14,921	NA	92%	29.55%	15.00%	17.17%	12.4%	SERC-E is highly dependent of coal resources. The loss of impacted CCR Resources could have substantial impacts during peak periods.
SERC-N	49,193	20,708	22,753	16,282	NA	79%	25.16%	15.00%	22.01%	10.3%	SERC-N is highly dependent of coal resources. The loss of impacted CCR Resources could have substantial impacts during peak periods.
SERC-SE	61,437	19,265	26,506	17,757	NA	92%	29.50%	15.00%	36.35%	6.9%	Loss of impacted CCR Resources could result in having inadequate reserves during peak periods.
SPP	65,092	26,561	10,577	9,402	38%	35%	13%	12.00%	26.60%	11.1%	No impact
WECC-Combined		22,155	15,034	13,462	18%	42%	8%	15.40%	22.10%	14.57%	Loss of impacted CCR Resources could result in relatively minor impacts, but nevertheless inadequate reserves during peak periods.
WECC-CAMX-US	53,513	131	0	0	NA	0%	0%	16.14%	18.71%	18.71%	No impact
WECC-NWPP	56,434	13,474	5,297	5,297	NA	39%	7%	16.56%	23.03%	16.0%	No impact
WECC-RMRG	18,262	8,625	5,685	4,459	NA	52%	9%	14.17%	27.41%	18.10%	No impact
WECC-SRSG	32,854	9,970	4,052	3,706	NA	37%	7%	15.83%	28.82%	22.1%	No impact
Grand Total	907,590	286,420	200,115	170,107	NA	59%	10%	NA	NA	NA	

Message

From: Johnson, Kirk D. [kirk.johnson@nreca.coop]
Sent: 5/22/2017 4:14:32 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
CC: Morrison, Jay A. [jay.morrison@nreca.coop]; Cassady, John M. [John.Cassady@nreca.coop]; Cromwell, Ted T. [ted.cromwell@nreca.coop]
Subject: Responses to Administrator Pruitt's questions
Attachments: Final Pruitt Letter.pdf; NRECA Comments Identifying Burden Reduction Opportunities under E.O. 137....pdf

Dear Ryan and Mandy –

When we met with Administrator Pruitt earlier this month, he asked about specifics on CPP lost investment, Regional Haze specifics, and NRS ideas. The attached letter from our CEO to the administrator covers those issues and we would be happy to discuss further should you or others at EPA want to dig deeper.

Thanks so much for reaching out to us!

-K

Kirk Johnson

Senior Vice President, Government Relations

703-907-5775 (office) | Ex. 6 (mobile) | kirk.johnson@nreca.coop

Assistant: Erin Steverson | Ex. 6 | erin.steverson@nreca.coop



NRECA Mission: To Promote, Support, and Protect the Community and Business Interests of Electric Cooperatives.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, copy, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.



May 15, 2017

Via Email

Samantha Dravis
Senior Counsel and Associate Administrator for Policy
Regulatory Reform Officer for Executive Order 13777
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Identification of Regulations for Repeal, Modification or Replacement Under Executive Order 13777
- Docket No. EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification under Executive Order 13777, "Enforcing the Regulatory Reform Agenda." EO 13777 furthers the policy goal of alleviating unnecessary regulatory burdens on the American people by directing the heads of federal agencies to establish Regulatory Reform Task Forces (RRTF) which, among other duties, is directed to seek input from entities significantly affected by Federal regulations including, among others, trade associations. NRECA appreciates the opportunity to recommend burden reduction candidates and incorporates by reference comments submitted by the Utility Air Regulatory Group (UARG), the Utility Solid Waste Activities Group (USWAG), and the Utility Water Act Group (UWAG).

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives chartered to provide affordable, reliable electricity to approximately 42 million people in 80 percent of U.S. counties. Rural electric cooperatives are small businesses, most of which serve member-owners, especially those in rural areas, facing significant economic challenges.

Electric cooperatives and our member-owners value, and deserve, a healthy environment and cooperatives are proud of their environmental compliance. Nonetheless, the economic challenges faced by so many cooperatives and their member-owners underscore the importance of ensuring that these regulations are cost-effective.

NRECA appreciates the efforts already announced to reconsider several regulations of utmost concern to our members, specifically:

- The Clean Power Plan (80 Fed. Reg. 64661, October 23, 2015) to be reviewed per Executive Order 13783 (82 Fed. Reg. 16093, March 31, 2017);
- The Clean Water Rule, also known as the "Waters of the US" rule (80 Fed. Reg. 37054, June 29, 2015) to be reviewed per Executive Order 13778 (82 Fed. Reg. 12497); and
- The Steam Electric Effluent Limitation Guidelines rule (80 Fed. Reg. 67838, November 3, 2015) per EPA's notification and postponement of compliance dates (82 Fed. Reg. 19005, April 25, 2017).

Each of these rules has significant substantive and procedural deficiencies as discussed below and in the comments submitted by UARG regarding the Clean Power Plan and UWAG concerning the WOTUS and ELG rules. We look forward to working with EPA on these issues.

We also urge EPA to act quickly on USWAG's petition for reconsideration of the Coal Combustion Residuals (CCR) rule (80 Fed. Reg. 21302, April 17, 2015) submitted May 12, 2017. As discussed below and in the comments submitted by USWAG, the Water Infrastructure Improvement for America (WIIN) Act (P.L. 114-322, December 16, 2016), provides EPA with the authority, previously lacking, to implement and enforce the federal CCR criteria through state or federal permits and to incorporate risk-based approaches to achieving the protectiveness embodied in the CCR rule.

Air Issues:

1. EPA should remove New Source Review program elements that impede electric generating unit (EGU) efficiency improvements.

EPA may propose that EGUs to make heat-rate improvements or efficiency-based modifications to existing EGUs under revisions to the Clean Power Plan regulations. NRECA has previously filed comments and made suggestions relating to an inadvertent triggering of NSR requirements when undertaking many efficiency improvements. There are numerous examples of EGUs identifying numerous projects that could improve unit efficiency by greater than 5%, yet these projects would almost certainly trigger NSR concerns as the program is currently implemented. This means that these projects likely won't be pursued.

In 2005, EPA proposed to remedy some of the NSR program difficulties, but that effort was never finished and published as a final rule. EPA should revisit their 2005 NSR reform proposal as a starting point for making much needed changes to this program.

EPA needs to change the NSR rule to provide substantial certainty that efficiency improvement projects don't trigger a NSR review or do not create a reasonable apprehension of NSR review.

2. EPA should re-evaluate their compliance testing requirements under the MATS program.

MATS compliance testing is very expensive and in many circumstances testing results indicate that when HAP emissions exist, they are below the test method detection level. Compliance testing should not be punitive, nor should sources be discouraged from seeking testing waivers in situations where EPA has otherwise provided for them through guidance.

A single battery of stack tests for MATS acid gas and particulate matter (PM) compliance can cost over \$25,000 per calendar quarter, or \$100,000 per year. "Low-emitter status" determination requires three years of quarterly stack testing, or a total of 36 individual data points at a cost of about \$300,000. Once successfully completed, the low-emitter status still requires a stack test frequency every third year. The on-going testing and monitoring is excessive, burdensome and in some cases duplicative and provide little benefit. The following is suggested:

- Some EGUs are inherently low-emitters given installed control technology and/or fuel choice.

- EGUs that use Powder River Basin (PRB) coal have relevant information that fuel chloride concentration is frequently below 10 ppm. Ash from PRB fuel is highly alkaline and adsorbs the chlorine gases that would otherwise be emitted. HCl concentration at the boiler outlet, before any pollution control technology, is already at or below test method detection levels.
- Pre-status determination of nine tests, including the initial performance test, can provide statistically relevant indications of performance levels at relatively high confidence intervals.

Once the low-emitter status is confirmed a stack test of once in 3 years, as currently provided in MATS, should continue to be adequate.

Current EPA Clean Air Act National Stack Testing Guidance provides for certain testing waivers, including a relaxation of testing frequency, when multiple units at the same location have similar design and when they have exhibited similar traits relating to verified emissions. It seems reasonable that such guidance can be extended to coal-based EGUs when the same principles are applied.

The source should provide sufficient emissions data that, though the margin of compliance is not substantial, allow for a determination that the variability of emissions is low enough for confidence that the unit is in compliance. The national guidance provides three relevant factors for evaluating whether a waiver of testing may be appropriate.

The guidance further identifies that if a facility does not have the ability to emit a pollutant in excess of the prescribed emissions limit that a waiver may be granted on a case-by-case basis.

Finally, EPA should provide that an EGU undergoing maintenance (not an NSR major modification), upon submitting a reasonable request for an extension of time to perform a required periodic compliance test, be granted an extension, not to exceed 720 hours, to conduct such testing if the scheduled restart of such EGU does not provide for a 720-hour shakedown period prior to the end of the calendar quarter. This experience does not arise from a force majeure; not unlike and initial startup compliance with the requirements may be a reflection following major maintenance on systems that will likely require several days of shakedown.

EPA can maintain the stringency of MATS while also significantly reducing the compliance burden of the rule, by making these recommended changes.

3. EPA should revise their SIP-call to the states relating to the treatment of startup, shutdown, and malfunction (SSM) in utility operations.

Coal-fired EGUs are very large facilities with many complex and interconnected systems and components that generate electricity while maintaining compliance with both their environmental and power system regulations. Generally, pollution control technology performance cannot be optimized with changing operating levels or at levels of operation significantly below that designed for maximum pollution control technology performance.

Many coal-fired EGUs now operate at lower loads and at varying loads to accommodate the growth of renewable energy sources. Sudden changes in operating levels that are forced upon a particular facility by electric grid operation can and do significantly affect pollution control performance. Challenges to emission control performance are sometimes unavoidable and are always highest

during periods classified as startup, shutdown, and malfunction.

A well-reasoned SSM program should consider whether an SSM event actually causes or contributes to any significant impacts on ambient air quality or ambient standards non-attainment. The growing nationwide attainment or maintenance of attainment with ever-tightening NAAQS suggests that existing SSM allowances in permits should be retained as they are not triggering adverse air quality issues. In fact any emission upsets have been calculated into 'normal' operation allowable emission rates in permits and AP-42 factors. With its current policy EPA has over-reached in the conclusions that some state programs are ineffectively managing their sources in situations involving SSM.

Accordingly EPA should withdraw its SSM SIP call and instead encourage state agencies to work with their sources to critically evaluate the implications of specific SSM events that can or may have previously occurred at a particular facility before establishing whether any new event of the same type is worthy of any action at all.

4. NAAQS attainment should be based on air quality monitoring and not modeling estimates.

EPA made a significant change when they decided to use computer modeling rather than actual air quality monitoring data to make 'non-attainment' determinations for the Sulfur Dioxide NAAQS. Any number of variables used in the model can have a significant impact on these determinations. This can then be compounded by EPA establishing non-attainment based on exaggerated modeled information and then applying "potential to emit" models to drive permitted emission limits well below what is needed to achieve attainment. This approach causes significant cost to economic development and can even prohibit business development in these areas. This can be easily remedied by EPA using actual monitored emissions data to establish nonattainment designations.

5. Return primacy for the Regional Haze program to the states.

Congress established Clean Air Act authority for EPA to set best available retrofit technology requirements with the goal of achieving natural visibility conditions in areas like National Parks and Wilderness areas by 2064. But Congress gave the *states* the primary role to determine where these determinations apply using a four part test as well as determining their 'glide-path'. Compliance with Phase I of this program will largely be achieved by 2018.

In recent years, EPA has become much more prescriptive in forcing states to implement the program exactly as EPA wishes, or else EPA rejects the state program and issues a Federal plan. For Phase II of the program, EPA appears to be doubling down on this approach with even greater prescriptiveness in their recent guidance and rulemaking. This will force states to impose high cost, low benefit pollution controls to drive a standard based on aesthetics rather than human health and the environment. EPA has largely demanded that states impose selective catalytic reduction technology on all utility units to control NOx emissions. This technology can cost hundreds of millions per unit for purported visibility improvements that are difficult to perceive. EPA also requires use of their outdated models which historically have over-estimated visibility impacts.

EPA should revise their recent guidance and rulemaking to put the decision making back in the hands of the states and to allow them the time and discretion to cost-effectively manage their

program towards a goal that is still 48 years away. A good first step would be to extend the 2018-2028 planning and compliance cycle by at least 3 years, to give states and the regulated community added time to meet the next round of limits.

Specific to the Federal Implementation Plan(FIP) for Arkansas, EPA, by a Federal Register notice dated April 25, 2017, 82 Fed Reg. 18994, announced a 90 day stay of the rule and the convening of a proceeding for reconsideration of certain requirements contained in the final FIP rule published in the Federal Register on September 27, 2016.

EPA should evaluate the Arkansas FIP requirements for coal-fired EGUs referenced in the federal register notice and amend the requirements to reflect timing of controls, costs of controls, and overall impact on visibility improvement.

In Utah, the Regional Haze litigation focuses on the agency again rejecting the state's plan and promulgating SCR technology to be implemented by 2021 even though analysis conclusively demonstrates that EPA's approach would achieve, at most, a 0.1 deciview improvement compared to the state's approach. Yet EPA's approach would increase costs by several hundred million dollars. If implemented, EPA's approach will have dire consequences for the local cooperative whose portion of capital cost (\$45-50 million) would exceed their current financing capacity prior to 2025. Time is of the essence for EPA to reevaluate their approach and let the more cost-effective state SIP be adopted.

6. EPA should finalize proposed revisions to 40 CFR Part 60 App. F Procedure 2, section 10.4

On November 21, 2016 EPA issued a direct final rule (81 Fed. Reg. 83160) and an alternative proposed rule (81 Fed Reg. 83189) addressing quality assurance requirements for particulate matter (PM) continuous monitoring to demonstrate Clean Air Act NSPS compliance. These actions were necessary to correctly account for the installation of additional PM control devices and their effect on compliance with annual quality assurance/quality control criteria.

Due to comment on the direct final rule the rule had to be withdrawn as required by legal procedure. EPA should complete the rulemaking process on the proposed rule by addressing any concerns with it and an issue final rule revising section 10.4 referenced above for reasons heretofore stated.

Waste Issues:

1. Revise the Coal Combustion Residuals, or "CCR," rule to reflect the permitting and risk-based opportunities provided by the Water Infrastructure Improvement for the Nation (WIIN) Act – 40 CFR 257 & 261 (80 Fed. Reg. 21302, April 17, 2015).

In the absence of clear RCRA authority, the CCR rule promulgated in 2015 established self-implementing one-size-fits-all federal standards for coal ash and air pollution control scrubber sludge; standards that can only be enforced through citizen suits.

The WIIN Act, signed into law last December, gives EPA new authority to implement the federal requirements through state permitting programs – the mechanism used to implement the current Municipal Solid Waste Landfill (MSWLF) requirements upon which the CCR criteria are based and even the federal *hazardous* waste rules. Most importantly, it allows those permits to reflect site-specific conditions and risks so long as the conditions in the permit are “as protective” as the federal criteria. The new law also allows EPA to establish a federal CCR permitting program for those states that do not adopt their own programs.

This new WIIN authority removes EPA’s rationale for the current self-implementing approach as well as the Agency’s justification for one-size-fits-all standards. EPA will be revisiting parts of the CCR rule under a settlement agreement which provides the perfect opportunity to reflect the new WIIN authority and incorporate site-specific, risk-based approaches into the federal standards.

Regulating CCR units under a state or federal permit that reflect site specific conditions and risks will significantly reduce the burden of complying with the CCR rule. In addition, implementing the requirement through permits will remove the burden of bringing, defending against, and adjudicating citizen suit – a burden reduction for everyone.

NRECA is a member of USWAG and wholeheartedly endorses the petition for reconsideration of the CCR rule submitted May 12, 2017, and to extend the upcoming CCR rule compliance deadlines. Owners and operators of CCR units are or will shortly be confronted with significant and irrevocable decisions or financial commitments to comply with the CCR rule – decisions or commitments that may be unneeded, inappropriate, or insufficient if the rule is modified. In addition, the CCR and ELG rules (see below) must work together and be implemented together. EPA has already stayed the ELG requirements while considering a petition submitted by UWAG. To make sure the two programs work together, compliance dates in the CCR rule should also be stayed.

2. Revise the PCB regulations to allow disposal of all wastes with PCB contamination of less-than 50 parts-per-million in modern, engineered landfills such as municipal solid waste landfills and other non-TSCA units.

EPA has determined that disposal of remediation wastes containing PCBs at less than 50 parts-per-million (<50 ppm) can be protectively managed in modern, engineered landfills such as municipal solid waste landfills (MSWLF) and other non-TSCA units. In fact, the PCB regulations already allow disposal of *most* < 50 ppm PCB-contaminated waste in non-TSCA facilities (See 68 Fed. Reg. 4934, January 31, 2003 acknowledging that < 50 ppm PCB remediation waste” has little inherent potential to pose an unreasonable risk to health or the environment.”), but not all as-found remediation waste. EPA has issued approvals for NRECA and USWAG members to dispose of as-found < 50 ppm remediation wastes subject to conditions of the approval, including reporting to EPA, the state, and local authorities each time soil is disposed of under the approval. (Approval available online at <https://www.epa.gov/pcbs/nationwide-risk-based-pcb-remediation-waste-disposal-approvals-under-title-40-code-federal#nreca>, current as of May 15, 2017.)

While NRECA’s members very much appreciate the approvals, we recommend that the PCB disposal regulations themselves be amended to reflect EPA’s protectiveness determination and acknowledgement that PCB cleanup should be driven by the as-found concentration of PCBs (See 40

CFR 761.50(b)(3), “PCB remediation waste ... is regulated for cleanup and disposal in accordance with 761.61” and 761.61 “Any person cleaning up and disposing of PCBs under this section shall do so based on the concentration at which PCBs are found.”). EPA should allow *all* low-level (<50 ppm) PCB wastes to be managed in modern, engineered landfills such as MSWLF. We believe this change will encourage and significantly reduce the costs and regulatory burden of cleaning up low-level PCB contamination wherever it may be found.

3. Issue a Letter of Interpretation confirming that refined coal and boiler cleaning wastes do not trigger regulation of utility steam generation boilers as commercial and industrial solid waste incinerators (CISWI) – 40 CFR 60 and 241 (78 Fed. Reg. 9112, February 7, 2013).

The commercial and industrial solid waste incineration (CISWI) rule established standards for units that “combust” solid waste. In comments on the proposed rule, the Utility Solid Waste Activities Group (USWAG) raised concern over potential application of the rule to boiler cleaning wastes and refined coal. The concerns were not resolved in the final rule or response to comments, and USWAG subsequently, on November 4, 2013, USWAG asked EPA to confirm that the introduction of refined coal and boiler cleaning waste into a utility boiler will *not* subject the unit to CISWI.

In the course of operations, boiler cleaning wastes and refined coal may be introduced into a utility boiler as a practical way to manage materials without increasing emissions and even to reduce the emissions of certain contaminants. As explained in both the USWAG comments and the 2013 request, these materials are not combusted when introduced into utility boilers because these materials have no heating value are, therefore, not combusted. Consequently, they should not trigger the CISWI requirements.

Since submitting the initial request for clarification, USWAG staff has provided additional justification for the request and has responded to additional questions from EPA’s Office of Resource Conservation and Recovery (ORCR) staff, and have every reason to believe that the Agency is well underway toward issuing such a confirmation.

Water Issues:

1. Review and reconsider the Steam Electric Effluent Limitation Guidelines (ELG) rule with respect to the identification of best available treatment technology and the quality and public availability of information and data supporting the rule – 40 CFR 423 (80 Fed. Reg. 67838, November 3, 2015).

The Steam Electric Effluent Limitation Guideline (ELG) rule prohibits discharge of waters used to transport coal ash and imposes unachievable standards for discharge of wastewaters from air pollution control systems (e.g. scrubbers). The rule is ripe for revision based on substantive and procedural deficiencies.

- EPA significantly underestimated the costs of compliance and the actual availability of technologies undergirding the rule.
- The rule will require many plants to redesign their ash and wastewater management systems at tremendous cost, yet with no assurance the technology EPA relied on will actually work.

- EPA grossly over-classified information, methods, and analyses as confidential business information (CBI) in violation of the Data Quality Act and its own guidelines on transparency and reproducibility.

Plants that can't retrofit their systems or can't meet the limits could be forced to close. NRECA urges EPA to revisit the best available technology (BAT) limits for flue gas desulfurization (FGD) wastewater and bottom ash transport water (BATW).

NRECA greatly appreciates that EPA has announced that it is considering petitions for reconsideration submitted by the Utility Water Act Group (UWAG) and the Small Business Administration Office of Advocacy. The recent administrative stay of the effective dates of the ELG rule is testament to the seriousness with which the Agency is considering the petitions. This stay is especially important for facilities that otherwise would have been forced to make imminent, significant, and irreversible capital investment within the next few months to meet the rule's aggressive implementation deadline.

2. Withdraw and re-propose the Waters of the United States (WOTUS) rule – 33 CFR 328 (80 Fed. Reg. 37054, June 29, 2015).

The final WOTUS rule expanded Clean Water Act jurisdiction in a manner that affects electric cooperatives by delaying and increasing the costs for constructing new and maintaining existing power lines and by potentially increasing the costs to site, operate, and eventually decommission new and existing electrical generation facilities.

We appreciate and support Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" and look forward to working with EPA and the US Army Corps of Engineers in its implementation.

NRECA appreciates this opportunity to provide our initial recommendations for opportunities to reduce regulatory burden from certain regulations while protecting our environment. We particularly compliment EPA for the very public approach to soliciting burden reduction suggestions. We look forward to working with EPA and other stakeholders in implementing Executive Orders 13771 and 13777.

Respectfully submitted,



Dorothy Allen Kellogg
Sr. Principal – Environment Policy

CC: K. Bromberg, SBA Office of Advocacy

Message

From: Roewer, James [JRoewer@eei.org]
Sent: 7/25/2018 7:46:08 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]
Subject: Subject to Closure and Alternative Closure

Barnes, I got your message responding to my email, thank you.

As I understand your response and explanation regarding the date on which a CCR unit becomes subject to forced closure under the extended closure deadlines, e.g., in the case where the 257.60 aquifer location restriction is not met, the unit becomes subject to forced closure under 257.101 on October 31, 2020, and, per 257.103(c)(1), an o/o must prepare and place in the operating record a notification of intent to comply with the alternative closure requirements within six months of that date, or by no later than April 30, 2021.

Applying that same timing to the other location restrictions in 257.61 - .64, impoundments that fail to make a demonstration of compliance with any of those location restrictions, become subject to forced closure under 257.101 on April 17, 2019 (assuming they did not attempt to make an alternative source demonstration, which would add 90-days to this date). Under the alternative closure provisions in 257.103(c)(1), an o/o would have six months from that date, or no later than October 17, 2019, to prepare and place in the operating record a notification of intent to comply with the alternative closure requirements. Under both circumstances, facilities could continue to receive wastes in the subject units during that six-month time frame between becoming "subject to forced closure" and submitting the alternative closure demonstration into the record.

Please let me know if my interpretation is correct.